United Nations A/63/288

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the present report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with General Assembly resolution 62/152.

* A/63/150 and Corr.1.

08-46109 (E) 090908

Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report, the first submitted by the Special Rapporteur, focuses on her vision and her priorities with regard to her mandate. It reviews the terms of reference of that mandate, as outlined in resolution 7/8 of the Human Rights Council, and describes the working methods of the Special Rapporteur and briefly presents the activities carried out by the Special Rapporteur during the first months of her tenure.

The Special Rapporteur presents the vision that will guide her activities and shape her approach to her mandate. She indicates the following priority areas for her future actions: (a) analysis of trends and challenges concerning defenders, to be carried out on a regular basis; (b) attention to defenders most exposed to attacks and violations; (c) analysis of the obstacles and challenges to defenders' exercise of the rights set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, particularly freedom of association and freedom of peaceful assembly; (d) the development, together with interested Governments, national institutions, regional mechanisms on human rights defenders, diplomatic representatives and relevant branches of international and regional organizations, of measures to enhance the protection measures provided to defenders, including by (e) strengthening follow-up to individual cases brought to her attention, in particular by (f) enhancing collaboration with stakeholders, including Governments, human rights communities at the national, regional and international levels, regional mechanisms for the protection of human rights defenders, national institutions, diplomatic communities, field presences of the Office of the United Nations High Commissioner for Human Rights (OHCHR), human rights components of United Nations country teams and peacekeeping missions, media, treaty bodies and other special procedures mechanisms, and (g) attention to how the Universal Periodic Review of the Human Rights Council evolves with a view to formulating recommendations aimed at making the review an effective mechanism for assessing the situation of human rights defenders.

The Special Rapporteur considers the establishment and strengthening of regional mechanisms for the protection of human rights defenders to be a fundamental step in improving the situation of defenders. Regional mechanisms include the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders within the secretariat of the Inter-American Commission on Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe, the Focal Point for Human Rights Defenders and National Human Rights Institutions within the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. Her collaboration with existing and future regional mechanisms will be a priority.

While the core function of her mandate is the protection of human rights defenders, the Special Rapporteur will place greater emphasis on the promotion aspect of her role by focusing on good practices related to the protection of defenders and the promotion of the defence of human rights and by popularizing the

Declaration. As a contribution to the popularization of the Declaration, and inspired by the tenth anniversary of that instrument, the Special Rapporteur annexes to the present report a number of key messages outlining principles and positions concerning defenders and the Declaration, which can be used in awareness-raising and outreach activities to mark that occasion. She encourages all Governments and other stakeholders to organize initiatives to celebrate the anniversary and suggests concrete measures to that end, such as the translation of the Declaration into national languages and its dissemination.

Report of the Special Rapporteur on the situation of human rights defenders

Contents

		Page
I.	Introduction	5
II.	The mandate	6
III.	Methods of work	7
	A. Communications	8
	B. Country visits	8
	C. Reporting and thematic studies	9
IV.	Activities	10
V.	Vision and priorities	11
	A. Analysis of trends and challenges	11
	B. Recognition and protection for defenders most exposed to attacks and violations	11
	C. Rights and freedoms of defenders	13
	D. Protection of human rights defenders	13
	E. Follow-up	14
	F. Collaboration with stakeholders	15
	G. Popularizing the Declaration on human rights defenders	15
	H. Good practices	16
	I. Universal periodic review mechanism	17
VI.	Conclusions and recommendations	17
Annex		
	Key messages concerning human rights defenders ten years after the adoption of the Declaration on human rights defenders, ten messages to raise awareness about defenders	19

I. Introduction

1. The present report is the first submitted to the General Assembly by the Special Rapporteur on the situation of human rights defenders and the eighth submitted in fulfilment of the mandate on the situation of human rights defenders since its establishment in 2000. The report is submitted pursuant to General Assembly resolution 62/152.

2. The mandate on the situation of human rights defenders was reviewed by the Human Rights Council at its seventh session, in March 2008, when the new Special Rapporteur was appointed. She took up her functions on 1 May 2008.

3. The Special Rapporteur inherits the achievements made over the previous eight years of the mandate's existence and the remarkable accomplishments of the previous mandate holder, which included: (a) the presentation of 34 reports, including 21 to the Commission on Human Rights, 7 to the General Assembly and 6 to the Human Rights Council; (b) 14 country visits to 12 countries, namely, Angola, Brazil, Colombia, Guatemala (visited twice), Indonesia, Israel and the occupied Palestinian territories, Kyrgyzstan, Nigeria, Serbia (including Kosovo), Thailand, the former Yugoslav Republic of Macedonia (visited twice) and Turkey; (c) more than 2,100 communications to some 120 countries on the situation of more than 3,600 defenders, 22 per cent of whom were women; (d) the issuance of more than 40 press releases raising concerns about the situation of human rights defenders in some 30 countries; and (e) a country-by-country compilation of developments in the area of human rights defenders, covering 118 countries (E/CN.4/2006/95/Add.5).

4. Those figures alone tell much about the achievements made over the first eight years of the mandate's existence. These include: lending visibility to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "the Declaration on human rights defenders") and to the situation of human rights defenders, their important work and the recognition and protection that it deserves; contributing to the protection of thousands of human rights defenders throughout the world; developing a knowledge base concerning the human rights issues and concerns that affect defenders, which has contributed to better understanding of the interlinkages between the situation of human rights defenders and the broader human rights context and of how one affects the other; supporting the establishment of regional mechanisms and the adoption of instruments for the protection of human rights defenders; encouraging the development of networks and coalitions of human rights defenders; including a gender perspective in the work to be carried out under the mandate; and raising awareness about the situation of defenders most exposed to the risk of attacks and violations against them and lending recognition to their human rights activities.

5. Mindful of the accomplishments already achieved in fulfilment of the mandate and with the aim of building and capitalizing on them, the Special Rapporteur devotes her first report to an overview of her vision and her priorities with respect to her mandate. While affirming the independence inherent to the position of a special procedures mandate holder, which implies, inter alia, that the Special Rapporteur is primarily and ultimately responsible for the decisions and the approach that she will take in implementing the mandate entrusted to her, the Special Rapporteur presents the present report in a spirit of transparency and openness to the views and

contributions of all stakeholders, which, she believes, will be of fundamental value in the implementation of her mandate.

6. The report reviews the mandate and the working methods of the Special Rapporteur and briefly presents the activities carried out by the Special Rapporteur during the first months of her tenure, including her vision and her priorities. The report elaborates on two priority areas identified by the Special Rapporteur: the universal periodic review mechanism of the Human Rights Council and how it relates to human rights defenders, and popularization of the Declaration. Given that the review is in its very first stages, the Special Rapporteur considers it strategic to flag the importance of that newly created mechanism, in view of its potential to become an instrument for the review of the situation of human rights defenders throughout the world, before devoting her future report to the Human Rights Council to the mechanism. As a contribution to the popularization of the Declaration on human rights defenders, and inspired by the tenth anniversary of the Declaration, the Special Rapporteur annexes to the present report a number of key messages outlining principles and positions concerning defenders and the Declaration, which can be used in awareness-raising and outreach activities to mark that occasion.

II. The mandate

7. The Human Rights Council reviewed the mandate on the situation of human rights defenders and renewed it in its resolution 7/8 using the title of Special Rapporteur. In paragraph 2 of the resolution, the Council outlined the terms of reference of the Special Rapporteur, who is mandated:

(a) To promote the effective and comprehensive implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through cooperation and constructive dialogue and engagement with Governments, relevant stakeholders and other interested actors;

(b) To study, in a comprehensive manner, trends, developments and challenges in relation to the exercise of the right of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(c) To recommend concrete and effective strategies to better protect human rights defenders through the adoption of a universal approach, and to follow up on these recommendations;

(d) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(e) To integrate a gender perspective throughout the work of his/her mandate, paying particular attention to the situation of women human rights defenders;

(f) To work in close coordination with other relevant United Nations bodies, offices, departments and specialized agencies, both at Headquarters and at the country level, and in particular with other special procedures of the Council;

(g) To report regularly to the Council and the General Assembly.

8. The resolution recognized the fundamental contribution of the collaboration of Governments with a view to fulfilment of the mandate. In its paragraphs 3 and 4, the Human Rights Council urged all Governments to cooperate with and assist the Special Rapporteur in the performance of his/her tasks, to provide all information and to respond to communications transmitted by the mandate holder without undue delay and called upon Governments to seriously consider responding favourably to the requests of the Special Rapporteur to visit their countries and to enter into a spirit of constructive dialogue with the Special Rapporteur.

9. The Special Rapporteur appreciates in particular the appeal made in the resolution to follow up on and implement her recommendations so that she can carry out her mandate effectively. The Special Rapporteur shares the approach of the Human Rights Council and believes that follow-up and implementation are the decisive elements required to make a real difference on the ground for human rights defenders.

10. In both paragraphs 3 and 4, in fact the provisions of paragraphs 8 and 9 of resolution 62/152 of the General Assembly, are reiterated. That resolution has other important provisions: (a) an appeal to Governments for full implementation of the Declaration on human rights defenders, with a particular emphasis on rights instrumental to the work of defenders, such as freedom of expression and association (paras. 1 and 5); (b) a condemnation of attacks against defenders and an appeal for the protection of defenders (paras. 3 and 4); (c) a warning that any measures to combat terrorism and threats against national security must not hinder the work of human rights defenders (para. 6); (d) an appeal for an end to impunity for attacks, threats and violations against defenders, including gender-based violence (para. 7); and (e) an invitation to translate the Declaration on human rights defenders into national languages, to improve its dissemination, to raise awareness and to undertake training activities to improve understanding of the work of defenders, its importance and the need to protect it (paras. 10 and 11).

11. In addition to promoting the implementation of the Declaration and the other international human rights instruments, which will continue to constitute the legal framework for the fulfilment of her mandate, the Special Rapporteur intends to promote the implementation of those provisions of resolution 62/152 as policy and programmatic priorities that will guide her activities.

III. Methods of work

12. The Special Rapporteur has adopted methods of work that build on those developed by the Special Representative of the Secretary-General on the situation of human rights defenders, in compliance with the Code of Conduct for special procedures mandate holders of the Human Rights Council and consistent with the methods of work for special procedures as described in the Manual of Operations of the Special Procedures of the Human Rights Council, adopted at the fifteenth annual meeting of special procedures mandate holders, held in June 2008.

A. Communications

13. Since the beginning of her tenure, the Special Rapporteur has been sending communications regarding allegations of human rights violations against human rights defenders. She has been sending an average of 40 communications per month. Communications remain a major means of protection that the mandate can provide to human rights defenders. In a spirit of constructive dialogue, the Special Rapporteur will continue to send them to concerned Governments in the common efforts to prevent human rights violations, to protect human rights defenders, to investigate allegations and to prosecute perpetrators.

14. Communications also provide a basis for the analysis of thematic and geographic trends related to human rights defenders. The Special Rapporteur is keen to continue studying communications and considers them a basis for her analysis and for the formulation of specific recommendations that will emerge from such analysis.

15. The Special Rapporteur is aware of the challenges posed by follow-up to communications and intends to intensify work in that area, in particular by engaging with relevant stakeholders who can, within the framework of their own mandates and roles, follow developments in the individual cases and situations reported in communications. Here, the Special Rapporteur is thinking in particular of the following: (a) Governments and their responsibility to cooperate with the mandate holder in clarifying matters brought to their attention; (b) the sources of communications, with respect to whom the Special Rapporteur intends to strengthen dialogue and improve feedback regarding the cases brought to her attention; (c) regional mechanisms aimed at enhancing their proximity to and knowledge of national situations within their respective regions; (d) national institutions, especially those mandated to receive complaints, which can follow individual cases by carrying out activities such as visiting defenders, monitoring their trials and providing legal assistance; (e) diplomatic communities, in particular those that have specific guidelines for the protection of human rights defenders, such as the 2004 European Union Guidelines on Human Rights Defenders,[1] the 2005 Norwegian guidelines on human rights defenders[2] and the 2008 Declaration of the Committee of Ministers on the Council of Europe action to improve the protection of human rights defenders and promote their activities,[3] or that might adopt such guidelines in the future; and (f) the field presences of OHCHR and other human rights components in United Nations country teams and peacekeeping missions.

B. Country visits

16. Country visits are the most effective means at the disposal of mandate holders to make a difference on the ground in terms of fact-finding, monitoring, recognizing and protecting defenders and making policy decisions, including in response to the momentum created by missions carried out by special procedures mechanisms.

---

[1] Available at www.consilium.europa.eu/csm3_fo/showPage.asp?id=822&lang=en&mode=g.

[2] Available at www.regjeringen.no/upload/UD/Vedlegg/defenders.pdf.

[3] In particular, paragraph 2 (xi) calls Member States to provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas.

17. Country visits will remain a central pillar of the activities of the Special Rapporteur. On the basis of the visits undertaken by the Special Representative, as well as the requests for her visits, together with emerging trends identified through, inter alia, the analysis of communications, the Special Rapporteur recently sent requests for invitations to visit a number of countries in every region. She hopes that her requests will be met favourably by the Governments concerned so that a programme of missions can be envisaged for the medium and long terms.

18. The Special Rapporteur undertook her first country mission in July 2008; she visited Togo from 28 July to 4 August. The visit was made jointly with the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights. It was the first mission of its kind to be made with a regional mechanism and thus marked the most advanced form of collaboration to date between the mandate holder and a regional mechanism. Through the mission, the Special Rapporteur sent a strong and concrete signal of her intention to pursue collaboration with regional mechanisms in implementing her mandate.[4]

C. Reporting and thematic studies

19. The Special Rapporteur reports periodically to the Human Rights Council and the General Assembly. In addition to her reports on the communications sent to and received from Governments and the reports on the country visits made, the Special Rapporteur will fulfil her reporting obligations by looking into thematic areas that will complement the body of knowledge developed by the Special Representative and by exploring new areas of analysis that will deepen understanding of the Declaration on human rights defenders and the many facets of the work of defenders and the challenges that they face.

20. Thematic studies and reports will be prepared by using a combination of methods: (a) research and analysis undertaken by the mandate holder with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), including the analysis of previous reports and communications related to the mandate; (b) requests for inputs to stakeholders, including through the use of questionnaires addressed to Governments and international organizations, including United Nations country teams, national institutions, civil society organizations and regional mechanisms; (c) the organization of expert seminars and other events to encourage contributions from experts, defenders and practitioners in a more interactive format that would result not only in an outcome — i.e., the report — but also in a process of dialogue and exchanges concerning themes relevant to human rights defenders.

21. In addition, the Special Rapporteur considers the 2006 report of the Special Representative to the Commission on Human Rights (E/CN.4/2006/95/Add.5) to be a milestone that deserves follow-up. The report contains profiles of 118 countries providing information and analysis concerning the situation of human rights defenders and the implementation of the Declaration. With its analysis of positive developments and remaining challenges, the report is a benchmark in the assessment of progress made in the implementation of the Declaration. A regular update of the

[4] The report on the mission will be presented to the Human Rights Council at its tenth session, in March 2009.

report would make it possible to measure change over time. That would be particularly useful in the context of the Universal Periodic Review of the Human Rights Council, to which updated versions of the report on countries could contribute meaningfully. Those are among the reasons that updating the report on country profiles should be identified as one of the goals of the Special Rapporteur for the period 2009-2010. Mindful of the significant amount of resources required for such an undertaking, the Special Rapporteur hopes to receive adequate assistance to carry out the task.

IV. Activities

22. This section of the present report gives a brief account of the activities undertaken by the Special Rapporteur from the beginning of her tenure, on 1 May 2008, to 10 August 2008.

23. In addition to the communications that the Special Rapporteur has been sending since the commencement of her tenure, the first activity that the mandate holder carried out in her official capacity was a mission to Ezulwini, Swaziland, to participate in the forty-third session of the African Commission on Human and Peoples' Rights from 11 to 14 May 2008. On that occasion, she had the opportunity to address the African Commission, to meet its Special Rapporteur on Human Rights Defenders in Africa and to consult with human rights defenders from the region. It was an important opportunity to establish contact and a working relationship with that institution and with her counterpart at the regional level in the area of human rights defenders. This first contact with the regional mechanism immediately yielded results in the form of the joint mission to Togo referred to in paragraph 18 above.

24. From 17 to 27 June 2008, the Special Rapporteur was in Geneva to engage in consultations with stakeholders, to participate in the information session for newly appointed mandate holders organized by OHCHR and to attend the fifteenth annual meeting of special procedures.

25. While in Geneva, the Special Rapporteur engaged in a wide range of consultations, which enabled her to share her vision regarding her mandate and to obtain feedback and suggestions concerning priorities for her workplan. She met with staff of the Office of the Commissioner for Human Rights of the Council of Europe and established contact with the Unit for Human Rights Defenders of the Inter-American Commission on Human Rights. Those meetings, together with the one held in Swaziland with the Special Rapporteur on Human Rights Defenders in Africa of the African Commission, gave the Special Rapporteur the opportunity to establish links with regional mechanisms at an early stage of her tenure.

26. The Special Rapporteur had meetings and teleconferences with representatives of Permanent Missions, human rights organizations and various units of OHCHR. She hopes that some meetings with delegations that could not take place will be rescheduled during her future visits to Geneva.

27. The Special Rapporteur addressed a group of defenders from 14 countries who had participated in the seminar entitled "Working with the United Nations Special Procedures System to fight torture and other forms of ill-treatment by acting on their

economic, social and cultural root causes", held in Geneva from 23 to 27 June by the World Organization against Torture.

28. She also participated in the seminar entitled "Freedom of religion or belief and protecting vulnerable identities: a global snapshot", held in Geneva on 21 and 22 June by the academic network Focus on Freedom of Religion or Belief.

29. The Special Rapporteur has already accepted invitations to participate in other conferences and events, on which she will report in her next reports to the Human Rights Council and the General Assembly.

V. Vision and priorities

30. This section outlines the vision of the Special Rapporteur with respect to implementing the mandate entrusted to her. It is intended to serve as a road map for her activities in the months and years to come.

A. Analysis of trends and challenges

31. The Special Rapporteur believes that she can more effectively perform her overarching protection function vis-à-vis human rights defenders if she keeps abreast of the trends and patterns concerning them. An intervention in an individual case is more meaningful if it is made in a human rights context with which the Special Rapporteur is familiar. Likewise, an assessment of the situation of human rights defenders undertaken during a country visit cannot be as comprehensive as it ought to be if it ignores the broader human rights context, which ranges from the environment in which human rights defenders operate to the national and regional human rights situation, and which includes the political context.

32. Analysis of trends and challenges affecting defenders can be undertaken at various levels as part of the framework of the activities carried out in fulfilment of the mandate. In the area of communications, that means looking at previous similar or related cases; in the area of country visits, it means looking at the broader human rights context and the environment in which defenders operate. The corpus of country visits and communications, which are expected to remain at a high level, will offer opportunities to undertake further analysis of emerging trends on the basis of a solid number of cases.

33. In addition, as noted in paragraph 21 above, the Special Rapporteur regards the 2006 report on country profiles (E/CN.4/2006/95/Add.5) as the most comprehensive document analysing the situation of human rights defenders throughout the world and as a baseline for measuring the progress and setbacks resulting from the future analysis that she intends to carry out.

B. Recognition and protection for defenders most exposed to attacks and violations

34. The mandate's focus on defenders exposed to specific forms of violations and attacks will be maintained and strengthened. Such defenders need specific and enhanced protection as well as targeted and deliberate efforts to make the

environment in which they operate safer, more enabling and more accepting. Experience shows that attacks against defenders target in particular those who address human rights challenges deemed sensitive or controversial. This varies depending on several parameters, including the region, the country and the political, economic, social and cultural factors and interests concerned. The Special Representative has identified several groups of defenders that are targeted in particular for their activities to defend human rights.

35. In both thematic and country reports, specific attention has always been given to the situation of women defenders. The gender dimension of defending human rights is also among the aspects that resolution 7/8 of the Human Rights Council requests the Special Rapporteur to address. She intends to fulfil that requirement in all aspects of her work and will formulate specific recommendations in that regard.

36. It is obvious that women defenders are more at risk of suffering certain forms of violence and that they are targeted by various parts of the social and political establishment with forms of prejudice, exclusion and repudiation, in particular when they work in the area of women's rights. This can be particularly acute when women defenders are perceived as challenging cultural norms and social constructs related to gender, femininity and sexuality.

37. In her 2007 report to the Human Rights Council,[5] the Special Representative analysed groups and categories of defenders who are particularly exposed to attacks and human rights violations as a result of the kind of human rights work that they carry out. In particular, she considered the situation of defenders working to promote economic, social and cultural rights and of those working to promote the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people. Those defenders appear to continue to be at particular risk of attacks and violations.

38. Other groups of defenders might be at particular risk, depending on the geographic context or the thematic areas addressed. In some countries, defenders whose work relates to past abuses are targeted in particular. When analysing the right to protest in the context of freedom of assembly in her last report to the General Assembly, the Special Representative identified, inter alia, student protests as an area where repression and retaliation against protesters had been particularly harsh.[6]

39. Those are just two examples illustrating how both thematic and country reports can draw attention to defenders who are at particular risk. That serves a threefold purpose: (a) to enhance knowledge and understanding with regard to human rights defenders and their work, including by lending visibility to new or less familiar aspects of human rights activities, such as those carried out within the framework of article 7 of the Declaration on human rights defenders;[7] (b) to formulate tailor-made recommendations to address the protection needs of defenders; and to recognize the work carried out by defenders as human rights work. Such recognition is already a form of protection for defenders.

[5] A/HRC/4/37.

[6] See A/62/225, para. 70.

[7] Article 7 reads, "Everyone has the right, individually or in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."

40. The number of communications sent by the Special Rapporteur is large enough to permit the identification of trends and patterns in this area. In addition, the Special Rapporteur intends to explore this area during her country visits and in her thematic reports. The focus of the Special Rapporteur on defenders at particular risk will also be part of the broader scope of the mandate and will be reflected in all her activities, including participation in conferences and interaction with stakeholders and partners.

C. Rights and freedoms of defenders

41. The Declaration reaffirms a number of rights and freedoms that are instrumental to the work of human rights defenders.

42. The Special Rapporteur considers that her overarching function of promoting the implementation of the Declaration includes studying the specific challenges and obstacles that defenders face in exercising the rights set out in the Declaration with a view to formulating recommendations aimed at overcoming challenges and removing obstacles.

43. It is apparent that exercising the right to freedom of association continues to be a challenge for defenders in many countries. Restrictive legislation regarding non-governmental organizations (NGOs), excessive State scrutiny of the management and administration of NGOs and administrative and judicial harassment prompted by minor procedural irregularities or fabricated evidence, together with other forms of retaliation against human rights organizations, continue to be reported to the Special Rapporteur.

44. She also continues to receive cases involving violations against the right to peaceful assembly, in which, inter alia, defenders are arbitrarily arrested, protests are repressed through the use of excessive police force and authorizations for demonstrations are not granted.

45. The Special Rapporteur will continue analysing the obstacles encountered and the progress made in defenders' exercise of the right to freedom of association and assembly, by complementing and updating the work already reflected in reports of the Special Representative. The Special Rapporteur is also contemplating the possibility of developing indicators to assess compliance and gaps related to the exercise of those freedoms.

46. In addition to the right to freedom of association and assembly, the Special Rapporteur will study the other rights set forth in the Declaration, by undertaking thematic studies on issues such as access to information; existing practices concerning consultations with governmental defenders; the right to an effective remedy; the fight against impunity; and access to funding.

D. Protection of human rights defenders

47. The protection of human rights defenders is a core function carried out under the mandate and the ultimate purpose of the activities and interventions of the mandate holder.

48. Proceeding from that premise, the Special Rapporteur has begun to reflect on how to reinforce the protection function entrusted to her and is interested in engaging in processes and initiatives aimed at promoting the development of strategies, programmes, institutions and mechanisms for the protection of human rights defenders under threat.

49. She is keen to develop working methods and collaboration arrangements with interested Governments, national institutions, regional mechanisms related to human rights defenders, diplomatic representatives and relevant branches of international and regional organizations to follow up on individual cases brought to her attention.

50. The Special Rapporteur is also interested in studying the data required for the development of an early warning mechanism for the protection of defenders with a view to anticipating systematic threats against them by activating the appropriate sectors of the relevant national protection system.

E. Follow-up

51. As noted in paragraph 15 above, the Special Rapporteur intends to intensify efforts to follow up, including on individual cases addressed in her communications. She will do so by strengthening her collaboration with stakeholders, as explained above.

52. The range of actors described in paragraph 15 have a role not only in following up on individual cases, but also in implementing and/or monitoring the implementation of the recommendations of the Special Rapporteur, particularly those set out in country reports.

53. In addition to the actors mentioned in paragraph 15, the Special Rapporteur believes that sources of communications and, more broadly, the entire human rights community in all its aspects at the national, regional and international levels have a role in following up on cases and recommendations. While direct contacts between the Special Rapporteur and national human rights organizations are ideal and should be encouraged, in practice it is difficult to maintain such contacts on a regular basis because of language barriers and the amount of resources needed to do so. The mediation role that international NGOs, umbrella networks and other organizations working on the ground with defenders can play in facilitating the access of national NGOs to the Special Rapporteur is fundamental in that respect, including in facilitating follow-up to individual cases.

54. Another actor that can play a positive role in monitoring the human rights situation concerning defenders — an actor that is already in the public domain — is the media. The Special Rapporteur already has a solid caseload of work involving journalists reporting on human rights and being targeted for that reason. The Special Rapporteur, like the Special Representative, regards them as human rights defenders and consistently intervenes to protect them. Their role in following up on cases at the country level through investigative journalism can make a real difference in terms of raising public awareness and shedding light on responsibilities. The Special Rapporteur will encourage the media to play their role in the promotion and protection of human rights.

F. Collaboration with stakeholders

55. Previous sections of the present report have highlighted the role that various stakeholders can play in making the activities of the Special Rapporteur meaningful and effective, in particular as regards follow-up and the roles of Governments, civil society organizations, national institutions, the United Nations system, regional mechanisms for the protection of defenders, diplomatic communities and the media.

56. While this aspect of her work need not be revisited, the Special Rapporteur wishes to reiterate once more that she will accord priority to the establishment and strengthening of solid relationships with regional mechanisms for the protection of human rights defenders, namely the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders within the secretariat of the Inter-American Commission on Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe and the Focal Point for Human Rights Defenders and National Human Rights Institutions within the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

57. The Special Rapporteur welcomes the adoption, in February 2008, of the Declaration of the Council of Europe on action to improve the protection of human rights defenders and promote their activities by the Committee of Ministers of the Council of Europe and is interested in contributing to initiatives aimed at its implementation. Similarly, she is keen to contribute to efforts to improve the implementation of the 2004 European Union Guidelines on Human Rights Defenders. Both instruments have strategic value in the protection of human rights defenders. The Special Rapporteur strongly encourages the adoption of similar instruments in other regions.

58. The Special Rapporteur has already begun to collaborate with other special procedures mandate holders, in particular with regard to the communications that she sends jointly with other mandate holders. She is aware of the importance of such collaboration, which improves the effectiveness of special procedures, both as a system and in terms of individual mandates. She will consult mandate holders when planning her country visits and drawing upon the findings of previous missions undertaken by other special procedures mechanisms with the aim of complementing and reinforcing their work.

59. The work of treaty bodies is and will remain a reference for both thematic and country reports. Relevant concluding observations will serve as a basis for follow-up in future missions, and the findings and recommendations set out in the country reports of the Special Rapporteur can be followed up in subsequent examinations of the same countries by treaty bodies. The jurisprudence and general comments of treaty bodies will continue to be references for thematic studies by the Special Rapporteur, particularly those related to the rights and freedoms of human rights defenders.

G. Popularizing the Declaration on human rights defenders

60. The Special Rapporteur believes that further efforts are needed to improve understanding of the rights and obligations that the Declaration on human rights

defenders entails. Ten years after its adoption by the General Assembly,[8] the Declaration is not an instrument that is sufficiently familiar either to those who bear the principal responsibility for its implementation, namely, Governments, or to its rights-holders, namely, human rights defenders.

61. The Special Rapporteur will promote and engage in activities aimed at the popularization and dissemination of the Declaration at the national level, including by enhancing understanding of the rights and obligations that it entails — primarily, governmental accountability for its implementation — and by helping to build the capacity of defenders to ensure respect for the rights to which they are entitled under the Declaration.

62. Popularizing the Declaration will be part of the Special Rapporteur's approach to her work, to which she will add a number of ad hoc activities. For example, on the occasion of the tenth anniversary of the Declaration, she wrote to all Governments through their Permanent Missions in Geneva, encouraging them to translate the instrument into national languages, as the General Assembly recommends in paragraph 10 of its resolution 62/152. The Special Rapporteur has developed a website on which versions of the Declaration in various languages are made available.[9] She hopes that Governments will respond positively to her invitation and that the Declaration will soon be accessible in many other languages on the Special Rapporteur's website. She has also extended the same invitation to national institutions, civil society organizations and OHCHR field presences.

63. As a further contribution to the popularization of the Declaration, the Special Rapporteur annexes to the present report a number of key messages outlining principles and positions regarding defenders and the Declaration that can be used for awareness-raising and outreach activities concerning human rights defenders. The Special Rapporteur encourages the organization of activities to mark the tenth anniversary of the adoption of the Declaration, together with the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, and hopes that those messages can be used on those and other occasions.

64. In the years to come, the Special Rapporteur will undertake other activities aimed at popularizing the Declaration, such as the development of a manual or set of guidelines for various stakeholders on how to use and implement that instrument.

H. Good practices

65. The protection and monitoring role to be played in accordance with the mandate inevitably results in more reporting on violations affecting defenders rather than on good practices in the area of protecting them and promoting the right to defend human rights. While the protection function carried out under the mandate will remain predominant, the Special Rapporteur is keen to study, share and report on good practices related to human rights defenders. She believes that greater awareness of good practices in that area will encourage their adoption and will therefore contribute to better implementation of the Declaration.

[8] Resolution 53/144, annex.

[9] http://www2.ohchr.org/english/issues/defenders/translation.htm.

66. The Special Rapporteur sees her engagement in activities aimed at the sharing of good practices related to human rights defenders, particularly at the regional level, as part of her overarching priority of popularizing the Declaration.

67. She will pursue that aspect of her work through participation in conferences and events on human rights defenders; through country visits, during which she will also look into good practices; and through analysis of trends and challenges, which she will undertake periodically.

68. The universal periodic review mechanism of the Human Rights Council can be another forum in which good practices related to human rights defenders can be shared and reported upon. That point will be expanded upon in the following section.

I. Universal periodic review mechanism

69. In her last report to the Human Rights Council, the Special Representative noted that the universal periodic review can be an opportunity to monitor the situation of human rights defenders in countries reviewed by the Council. She therefore encouraged Governments and other stakeholders to report on the situation of human rights defenders in national reports or in contributions submitted with a view to the preparation of the reports on which the review is based.[10]

70. The Special Rapporteur also considers the universal periodic review mechanism to be of strategic value in improving the situation of human rights defenders in the countries under review. As the Declaration is not a binding instrument and does not have a reporting mechanism, as a treaty-bodies system does, the potential of the mechanism is even bigger.

71. In view of the strategic value of the universal periodic review, the future report of the Special Rapporteur to the Human Rights Council will be devoted entirely to it with a view to the formulation of recommendations that will contribute to improving its effectiveness regarding the situation of human rights defenders.

72. To that end, the Special Rapporteur intends to share good practices that might emerge in this area, in terms of: (a) consistent analysis of the situation of human rights defenders in the universal periodic review reports; (b) precise and measurable recommendations concerning human rights defenders; (c) consultation with and participation by civil society at the national level; (d) a proactive attitude on the part of delegations in addressing human rights defenders; (e) the implementation of the recommendations resulting from universal periodic reviews concerning human rights defenders, including other elements of analysis that might emerge in the future.

VI. Conclusions and recommendations

73. **The present report outlines the vision and the priorities of the Special Rapporteur, which she wishes to share with Member States and other**

[10] See A/HRC/7/28, paras. 86-88.

stakeholders in a spirit of openness and transparency. She hopes that the same spirit will characterize her relationships with them throughout her tenure.

74. **The Special Rapporteur will interpret her mandate while building on the achievements of the previous mandate holder, the knowledge base developed and the methods of work used.**

75. **Inasmuch as the core function carried out under the mandate is the protection of human rights defenders, the Special Rapporteur will place strengthened emphasis on the promotion aspect of her role by focusing on good practices related to the protection of defenders and the promotion of the defence of human rights and by popularizing the Declaration.**

76. **In her future reports to the General Assembly and the Human Rights Council, the Special Rapporteur will have the opportunity to make many recommendations. She has already made a number of them in the body of the present report. In concluding the report, she wishes to reiterate the request made in the resolution renewing her mandate, which urges all Governments to collaborate with the Special Rapporteur. She therefore calls on them to respond favourably to her requests for invitations to visit countries, and to her requests that initiatives be undertaken to translate and disseminate the Declaration on human rights defenders, and that activities be organized to mark the tenth anniversary of the adoption of that instrument.**

Annex

Key messages concerning human rights defenders ten years after the adoption of the Declaration on human rights defenders, ten messages to raise awareness about defenders

On the occasion of the tenth anniversary of the adoption of the Declaration on human rights defenders and with the purpose of further popularizing that instrument, the Special Rapporteur wishes to bring the following messages to the attention of the international community.

1. **Human rights defenders**. Human rights defenders are those who, individually or together with others, act to promote and protect human rights. It is their activities in the defence of human rights that makes them human rights defenders.

2. **The Declaration on human rights defenders is an international instrument for the protection of the right to defend human rights**. The Declaration reaffirms rights that are instrumental to the defence of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an enabling environment that enables human rights defenders to carry out their work. National laws, including, in particular, legislation regulating the activities of civil society organizations, should uphold the principles of the Declaration.

3. **An enabling environment for human rights defenders**. The activity of defending human rights can be carried out safely and effectively if the environment in which defenders of such rights operate is conducive to their work. The enjoyment of the rights and freedoms set out in the Declaration is the primary element of an enabling environment. Other factors that contribute to such an environment are: the existence of effective and independent national human rights institutions; systematic collaboration with public authorities; the systematic participation of defenders in decision-making, including in the areas of law and policy, through institutionalized processes of consultation; policies related specifically to human rights defenders; human rights education policies and programmes; and open support for defenders on the part of public authorities and the political establishment.

4. **The protection of human rights defenders has a multiplying effect on the protection of human rights**. Human rights defenders are on the front lines of the protection and promotion of human rights in their countries. Protecting those who defend human rights has a multiplying effect on the broader promotion and protection of human rights. Conversely, wherever human rights defenders are under attack, respect for human rights is curtailed. The situation of human rights defenders is therefore a fundamental indicator of the situation of human rights in countries, and the protection of defenders is an indispensable element of the social and institutional framework for the protection of all human rights.

5. **A wide range of protection measures**. The primary responsibility for the protection of human rights defenders lies with Governments. Protection measures vary depending on the security risks faced by defenders. Ranging from security measures applied by the police to the analysis of patterns of attack against defenders, witness protection programmes, the investigation and prosecution of the

perpetrators of attacks against defenders and public recognition and acknowledgement of the work of defenders and condemnation of attacks against them, Governments can undertake a vast array of actions to respond to the protection needs of defenders. Protection can also be ensured by other actors, including defenders themselves and their networks; the judiciary, with its fundamental role in ending impunity; human rights mechanisms at the national, regional and international levels, including those established specifically for the protection of human rights defenders; the diplomatic community, with its good offices and diplomacy tools, including the issuance of emergency visas; and the media, which report on and lend visibility and recognition to the work of defenders. A combination of a broad range of protection measures is often the best response to ensure adequate protection for defenders under threat.

6. **End impunity for violations against human rights defenders**. The inability to investigate, prosecute and convict perpetrators of attacks and violations against defenders exposes them to greater risks and strengthens the public perception that human rights can be violated with impunity. Breaking that vicious circle of impunity is a fundamental contribution to the protection of defenders and of human rights more broadly.

7. **Political will is often a decisive factor in bringing about real change**. Legislation, policies and institutions are indispensable factors in creating an enabling environment for defenders. However, the attitude of the political establishment can make a fundamental difference in the effectiveness of legislative and institutional frameworks. Very often, firm public stands in support of human rights defenders can transform a situation of vulnerability for defenders into one of empowerment.

8. **Protection and recognition for defenders most exposed to attacks and violations**. Attacks against defenders are targeted in particular at those who work to overcome human rights challenges deemed sensitive or controversial. This varies depending on several parameters linked to the human rights context. In general, more efforts are needed to recognize and protect women human rights defenders and defenders working to promote economic, social and cultural rights, as well as those working to uphold the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people. Those defenders need specific and enhanced protection, as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and more accepting one.

9. **The gender dimension of the defence of human rights**. Women defenders have been and remain a vibrant part of the human rights movement. In several countries, women defenders are the leading force in the human rights community and women's organizations are the sector of civil society with the most social capital. However, women defenders — particularly those working in the area of women's rights — are at greater risk of being targeted by forms of prejudice, exclusion and repudiation by various parts of the social and political establishment. Analysis of the gender dimension of the work carried out in the defence of human rights is fundamental to addressing the protection needs and the legitimacy gaps that may affect women defenders. Parameters such as the level of participation, the number of organizations and the degree of representation related to women defenders, the prominence of women's rights on the agendas of defenders and

patterns of gender-based violations against the human rights of defenders are to be taken into account when assessing the situation of human rights defenders.

10. **Establish and strengthen regional human rights mechanisms for the protection of defenders**. In recent years, mechanisms for the protection of human rights defenders have been established at the regional level within regional intergovernmental organizations. These include the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders within the secretariat of the Inter-American Commission on Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe and the Focal Point for Human Rights Defenders and National Human Rights Institutions within the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. Those mechanisms complement and reinforce the protection role of the United Nations Special Rapporteur on the situation of human rights defenders and are well placed to closely monitor the situation of defenders. They deserve support and resources so that they can implement their mandates. Furthermore, consideration should be given to the establishment of a regional mechanism in Asia.

United Nations A/63/289

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 67 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, submitted pursuant to Human Rights Council resolution 7/4.

* A/63/150 and Corr.1.

08-46115 (E) 100908

Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

In the present report, submitted in accordance with Human Rights Council resolution 7/4, the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, outlines his vision and plan of implementation for the mandate.

The independent expert presents a brief overview of the engagement of United Nations human rights bodies with the issue of foreign debt, highlighting some of the key challenges. He then outlines his approach to the mandate, drawing attention to the principles which will guide his work and the broad objectives to be pursued in the context of the mandate: the primacy of human rights, international cooperation, participation and the responsibilities of all actors. The report identifies three broad objectives for the mandate: to raise awareness of the need to consider foreign debt as a human rights issue and generally broaden support for the mandate through regular dialogue with all stakeholders (including States that have not traditionally supported the mandate); to clarify some conceptual issues, including the linkages between foreign debt and human rights; and to review, revise and develop the draft general guidelines, which are designed to ensure that compliance with commitments arising from external debt does not undermine the capacity of States to fulfil their human rights obligations, particularly those relating to economic, social and cultural rights. Finally, the independent expert sets out his plan for the achievement of those objectives.

Contents

		Page
I.	Introduction	4
II.	Foreign debt and human rights	5
	A. United Nations concern with foreign debt and human rights	5
	B. Some key challenges	5
III.	General approach to the mandate	6
	A. Guiding principles	6
	B. Broad objectives	8
IV.	Plan of implementation	8
	A. Consultation and cooperation	9
	B. Study on foreign debt and human rights	10
	C. Draft general guidelines	10
	D. Other activities	10
V.	Conclusion	11

I. Introduction

1. In its resolution 7/4 of 27 March 2008, the Human Rights Council decided to redefine the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, and to rename the special thematic procedure "independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights". The Council also decided to extend the mandate of the independent expert for a period of three years.

2. The present report is submitted in accordance with Council resolution 7/4.

3. The independent expert was requested to pay particular attention to:

(a) The effects of foreign debt and the policies adopted to address them on the full enjoyment of all human rights, particularly economic, social and cultural rights in developing countries;

(b) The impact of foreign debt and other related international financial obligations on the capacity of States to design and implement policies and programmes, including national budgets that respond to the vital requirements for the promotion of the realization of social rights;

(c) Measures taken by Governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries;

(d) New developments, actions and initiatives being taken by international financial institutions, other United Nations bodies and intergovernmental and non-governmental organizations with respect to economic reform policies and human rights;

(e) Quantification of minimum standards to support the realization of the Millennium Development Goals;

(f) Enhancement of consultations with all relevant stakeholders in the fulfilment of his mandate.

4. The Council further requested the independent expert to participate in and contribute to the process entrusted with the follow-up to the International Conference on Financing for Development in order to bring to its attention the broad scope of his mandate; to seek the views and suggestions of various stakeholders, including States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations, on the draft general guidelines with a view to improving them and to present updated draft guidelines[1] to the Council in 2010; and to cooperate with the Committee on Economic, Social and Cultural Rights, as well as with the Advisory Committee, special procedures, mechanisms and relevant working groups of the Council related to economic, social

[1] The guidelines are designed to ensure that compliance with commitments arising from external debt does not undermine the capacity of States to fulfil their human rights obligations, particularly those relating to economic, social and cultural rights.

and cultural rights and the right to development, in his efforts to improve the draft general guidelines.

5. Cephas Lumina (Zambia) was appointed independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on 26 March 2008. He took up his appointment on 1 May 2008. The new independent expert would like to take this opportunity to thank his predecessors, Fantu Cheru and Bernards A. N. Mudho, for their valuable work under the previous mandate.

II. Foreign debt and human rights

A. United Nations concern with foreign debt and human rights

6. The issue of foreign (or external) debt has been on the agenda of various United Nations human rights bodies for more than two decades. Since the 1990s, the Commission on Human Rights and, subsequently, the Human Rights Council, have, in a number of resolutions and decisions, adverted to the challenges that excessive foreign debt burdens and economic reform policies pose for the realization of human rights, especially in developing countries.[2] Since 1997, those bodies have also attempted to address such issues through the establishment of thematic mandates, which have undergone several changes over the years.

7. The concluding observations of the various treaty bodies on the country reports submitted to them also indicate that high external debt burdens and dependency on foreign assistance can constitute obstacles to efforts by States parties to comply with their human rights treaty obligations, particularly those relating to economic, social and cultural rights.

B. Some key challenges

8. An examination of the resolutions and decisions of the United Nations human rights bodies concerning the issue of foreign debt and economic reform policies over the years reveals disparities in voting patterns concerning the mandate, with the developed (creditor) countries opposing the mandate on the grounds that such bodies were not the appropriate ones to deal with the issue of foreign debt and the developing (mainly borrower) countries overwhelmingly supporting it. That situation has implications for, inter alia, the effective implementation of the general guidelines. However, the independent expert believes that that obstacle can be overcome by acceptance of, and adherence to, the principle of shared responsibility by all stakeholders.

9. It is the independent expert's considered view that the global community has a responsibility to address human rights in a holistic manner and that this should include discussing the causes and context within which human rights violations occur. The burden of foreign debt is a key obstacle to sustainable development and the realization of human rights in many developing countries. Studies indicate that

[2] See Commission on Human Rights resolutions 1998/24, 1999/22, 2000/82, 2001/27, 2002/29, 2003/21, 2004/18 and 2005/19 and Human Rights Council decision 2/109. See also E/CN.4/Sub.2/1991/17.

some countries spend more each year on debt servicing than they do on human rights-related public services, such as education and health, and that despite the debt relief provided by the heavily indebted poor countries initiative and the multilateral debt relief initiative, many countries still have substantial debts which render it difficult for them to implement the Millennium Development Goals and to realize economic, social and cultural rights. Further, the impact of debt relief is often diluted by economic reform policies that debtor countries are frequently required to adhere to or implement, as well as difficult trade conditions.

10. The independent expert notes that there are also some countries that spend a significant portion of their domestic resources on debt servicing at the expense of their obligations related to the realization of economic, social and cultural rights but are excluded from the current debt relief initiatives because they do not meet the eligibility requirements.

11. Those challenges underscore the need for a new approach to the debt problem which, inter alia, incorporates human rights concerns and does not impose harmful economic conditions, as opposed to the approach that has prevailed to date, which focuses exclusively on poverty alleviation.

12. Finally, it is the independent expert's considered estimation that the mandate must be viewed in the general context of, inter alia, the purposes of the United Nations as spelled out in its Charter, including the achievement of international cooperation in solving international problems of an economic and social nature; the appeal by the 1993 World Conference on Human Rights to the international community to help alleviate the external debt burden of developing countries in order to supplement the efforts of such countries to fulfil their human rights obligations; and both the United Nations Millennium Declaration (resolution 55/2) and the Millennium Development Goals (in particular Goal 8, "Develop a global partnership for development"), which underline the responsibility of the international community to assist in the development efforts of the low- and middle-income countries.[3]

III. General approach to the mandate

A. Guiding principles

13. The independent expert's approach to his mandate is informed by a number of core principles: the primacy of human rights law; international cooperation as a human rights duty; participation; and the responsibilities of all actors, including international trade and financial institutions and private corporations.

[3] In para. 25 of the Millennium Declaration, States commit themselves to strengthening the capacity of all countries to implement the principles and practices of democracy and respect for human rights.

The primacy of human rights law and the centrality of human rights

14. It could be argued that States' human rights obligations have primacy over many other types of legal obligations under international law.[4] Consequently, all actions undertaken by States (and international organizations that are subjects of international law) should be consistent with international human rights law.

15. It is also generally accepted that human rights lie at the core of the broader mission of the United Nations. In his report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005), the Secretary-General reaffirms the significance of human rights as a key purpose of the United Nations, alongside development and security, and underscores the fact that the protection of human rights is essential to building a more secure and prosperous world. At the 2005 World Summit, heads of State or Government endorsed that vision.

International assistance and cooperation as a human rights duty

16. The imperative to address the effects of foreign debt and other related international financial obligations of States on the enjoyment of human rights stems from the principle of international assistance and cooperation, which is implicit or clearly provided for in numerous international human rights instruments. These instruments include the Universal Declaration of Human Rights (article 28); the Declaration on the Right to Development (article 3(3)); the International Covenant on Economic, Social and Cultural Rights (articles 2(1) and 22 and 23)[5] and the Convention on the Rights of the Child (article 4). Also worthy of note is the Millennium Declaration, which specifically acknowledges the collective responsibility of all States.

17. It is notable that international cooperation, in promoting human rights is also a key purpose of the United Nations, as set out in article 1(3) of the Charter. Further, article 56 of the Charter enjoins Member States to cooperate with the Organization in the achievement of its purposes, including the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all.

18. A key aspect of the duty of international cooperation is that States, individually or through membership of international institutions, should not adopt or engage in policies or practices that threaten the enjoyment of human rights.

19. Further, development cooperation should contribute to the promotion of and respect for human rights. It is notable in this regard that the treaty bodies, particularly the Committee on Economic, Social and Cultural Rights,[6] have urged

---

[4] Art. 103 of the Charter of the United Nations confirms the pre-eminence of States' obligations to respect human rights: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". The obligations under the Charter include the duty to cooperate with the United Nations in its quest to promote universal respect for human rights (art. 56).

[5] See also general comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights.

[6] See, for example, its general comment No. 4 on the right to adequate housing, para. 19; general comment No. 12 on the right to adequate food, para. 41; general comment No. 13 on the right to education, para. 60; and general comment No. 14 on the right to the highest attainable standard of health, para. 64.

international financial institutions to pay greater attention to the protection of human rights in their lending policies, credit agreements and debt relief initiatives.

20. Finally, according to the inter-agency statement of common understanding,[7] all programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments, and human rights standards contained in those instruments guide all development cooperation and planning.

Participation and inclusion

21. All persons are entitled to active, free and meaningful participation in, contribution to and enjoyment of civil, economic, social, cultural and political development in which all human rights can be fully realized.[7]

Responsibilities of all actors

22. While States have the primary responsibility for implementing international human rights obligations, there is a growing consensus that other actors, including international development, trade and financial institutions and private corporations, have the obligation to respect international human rights obligations (see, for example, A/HRC/8/5). Depending on the circumstances, such actors are also obliged to ensure that third parties, such as subcontractors, do not violate human rights and to formulate, adopt, fund and implement policies and programmes which address obstacles to the realization of human rights.

B. Broad objectives

23. Against the backdrop of the foregoing, the independent expert intends to focus on the following broad, interrelated objectives:

(a) To raise awareness about the need to consider foreign debt as a human rights issue and, in this regard, to broaden support for the mandate through consultations with all stakeholders;

(b) To undertake a thematic study on foreign debt and human rights in order to identify and clarify some conceptual issues which could also inform the draft general guidelines;

(c) To review, revise and develop the draft general guidelines.

24. The independent expert welcomes comments and suggestions on those broad objectives.

IV. Plan of implementation

25. The plan of implementation generally builds on the contributions made by the previous mandate holders and charts a course for the fulfilment of the mandate. To

[7] See "The human rights based approach to development cooperation: towards a common understanding among United Nations agencies", available from http://www.undp.org/governance/ docs/HR_Guides_CommonUnderstanding.pdf.

that end, the independent expert commits himself to undertaking the activities set out in paragraphs 26 to 40 below.

A. Consultation and cooperation

26. The independent expert believes that ongoing dialogue with all stakeholders, including those States that have traditionally been reluctant to support the mandate, is important for the successful fulfilment of the mandate and will greatly enhance the prospects for general acceptability and effective implementation of the draft general guidelines.

27. In an attempt to broaden support for his mandate, the independent expert will actively engage in dialogue with all stakeholders — Governments, international organizations and civil society — a task which is specifically spelled out in the mandate.

28. In the limited time available between his assumption of the mandate and the deadline for the submission of the present preliminary report, the independent expert initiated contact and informally consulted, to the extent possible, with some States; a range of United Nations officials, including in the Research and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights and in the United Nations Conference on Trade and Development; the Chairperson of the Committee on Economic, Social and Cultural Rights; and officials of the World Bank, the International Monetary Fund and the World Trade Organization based in Geneva. The independent expert has also had informal discussions with Mr. Cheru, former independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights.

29. On 3 July 2008, the independent expert had an informal meeting with civil society organizations based in Geneva with a view to (a) introducing his mandate and outlining his approach thereto; and (b) exploring areas of future cooperation, particularly with regard to the development of the draft general guidelines.

30. The independent expert is grateful to all those with whom he has had meetings and looks forward to enhancing such consultations over the course of his mandate.

31. Over the next few months, the independent expert will also consult with officials of the European Union, the European Parliament, the Organization for Economic Cooperation and Development, the Commonwealth Secretariat and the international financial institutions based in Washington, D.C., as well as with a number of non-governmental organizations concerned with economic, social and cultural rights. He will also participate in the 2008 Social Forum, to be held in Geneva from 1 to 3 September, the workshop on integrating human rights in financing for development, to be held in Geneva from 15 to 17 September 2008 and the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, to be held in Doha from 27 November to 2 December.

32. The independent expert recognizes that civil society is an indispensable partner in the fulfilment of his mandate. He believes that he can benefit from the support, expertise and analysis of civil society. To that end, the independent expert has accepted an invitation to participate in the International Strategy Meeting on

Economic, Social and Cultural Rights and ESCR-Net General Assembly, to be held in Nairobi from 1 to 4 December 2008, which will bring together a number of non-governmental organizations working in the area of economic, social and cultural rights. He will also endeavour to extend consultations with civil society organizations actively engaged in the implementation of human rights in general and economic, social and cultural rights in particular, throughout the world.

B. Study on foreign debt and human rights

33. Depending on the availability of resources, the independent expert proposes to undertake a study on foreign debt and human rights. The main purpose of the study will be to clarify the conceptual basis of the mandate and to contribute to raising its profile.

34. The study will address a number of issues, including coherence among policies governing foreign debt, international trade and official development assistance; illegitimate or odious debt; the participation of rights-holders in the policy formulation process; and the accountability of debtor countries and creditors.

35. It is anticipated that the results of the study will feed into the process concerning the review, development and updating of the draft general guidelines.

C. Draft general guidelines

36. In Human Rights Council resolution 7/4, the independent expert is requested to further develop and submit to the Council, in 2010, updated draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making on and execution of debt repayments and structural reform policies, including those arising from foreign debt relief.

37. The independent expert believes that in order to guarantee the acceptability of the draft guidelines and their subsequent implementation, it is essential to ensure the fullest possible participation of all stakeholders in their finalization. Thus, in keeping with his mandate, and resources permitting, he proposes to convene multi-stakeholder regional consultations on the draft general guidelines. The independent expert hopes to gain insights from the various perspectives on how best to proceed with the task of updating the guidelines.

38. The independent expert recognizes that the implementation of the general guidelines should benefit all, particularly women, young people, children and other vulnerable groups. In this regard, the independent expert commits himself to ensuring the fullest integration of a gender perspective, as well as the core principle of equality and non-discrimination, into the draft general guidelines.

D. Other activities

39. In keeping with the requirements of his mandate, the independent expert also intends to undertake country visits for the purpose of assessing the measures taken by States and international financial institutions to alleviate the effects of foreign

debt and other related international financial obligations of States on the full enjoyment of all human rights. Subject to invitation and criteria relating to debt burdens, the independent expert will endeavour to visit countries representing different regions of the world, particularly those countries which have never been visited by special procedure mandate holders.

40. It is anticipated that some of the insights gained from the country visits will also inform the review, revision and development of the draft guidelines.

V. Conclusion

41. **The present preliminary report outlines the independent expert's approach to his mandate and charts a course of action for the duration of his mandate. The independent expert is hopeful that, with the support and cooperation of all stakeholders, he will successfully realize his vision for the mandate and achieve the goals that he has set for himself over the course of the mandate.**

42. **The independent expert recognizes that the implementation of aspects of the mandate, particularly the proposed regional consultations on the draft general guidelines, will require the allocation of additional resources. In this regard, the independent expert requests States to consider making extrabudgetary contributions to the Office of the United Nations High Commissioner for Human Rights to enable the Office to provide support for the proposed regional consultations until the Human Rights Council can consider his request.**

United Nations A/63/290

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 126 of the provisional agenda*
Human resources management

Composition of the staff of the Office of the United Nations High Commissioner for Human Rights

Note by the Secretary-General

1. The Secretary-General has the honour to transmit to the members of the General Assembly the report of the High Commissioner for Human Rights on the composition of the staff of the Office of the United Nations High Commissioner for Human Rights (A/HRC/7/57).

2. In its resolution 61/159, the General Assembly requested the High Commissioner to submit a report on the composition of the staff of the Office of the High Commissioner to the Human Rights Council at its fourth session and to the General Assembly at its sixty-third session. That report was submitted to the Human Rights Council at its fourth session in March 2007 (A/HRC/4/93), and an updated report, reflecting the composition of the staff of the Office in 2007, was submitted to the seventh session of the Human Rights Council in March 2008 (A/HRC/7/57). The latter report, which was transmitted in conformity with the annual reporting cycle established by the Commission on Human Rights (see Human Rights Council decision 2/102), is hereby transmitted to the General Assembly for its consideration.

* A/63/150.

08-46121 (E) 200808

United Nations A/63/290*

General Assembly

Distr.: General
16 September 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda**
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Composition of the staff of the Office of the United Nations High Commissioner for Human Rights

Note by the Secretary-General

1. The Secretary-General has the honour to transmit to the members of the General Assembly the report of the High Commissioner for Human Rights on the composition of the staff of the Office of the United Nations High Commissioner for Human Rights (A/HRC/7/57).

2. In its resolution 61/159, the General Assembly requested the High Commissioner to submit a report on the composition of the staff of the Office of the High Commissioner to the Human Rights Council at its fourth session and to the General Assembly at its sixty-third session. That report was submitted to the Human Rights Council at its fourth session in March 2007 (A/HRC/4/93), and an updated report, reflecting the composition of the staff of the Office in 2007, was submitted to the seventh session of the Human Rights Council in March 2008 (A/HRC/7/57). The latter report, which was transmitted in conformity with the annual reporting cycle established by the Commission on Human Rights (see Human Rights Council decision 2/102), is hereby transmitted to the General Assembly for its consideration.

---

* Reissued for technical reasons.
** A/63/150 and Corr.1.

08-46121* (E) 180908

United Nations A/63/291

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 53 of the provisional agenda*
Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme (UN-Habitat)

Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme (UN-Habitat)

Report of the Secretary-General

Summary

The present report provides an overview of outcomes and results of the substantive issues addressed by General Assembly resolution 62/198. These have been clustered under the following major headings:

(a) Deepening the understanding of the impact of rapid urbanization;

(b) Implementation of the medium-term strategic and institutional plan for 2008-2013, including its enhanced normative and operational framework for country-level activities and excellence in management;

(c) Strengthening the catalytic and pre-investment role of the United Nations Human Settlements Programme;

(d) Strengthening the role and contribution of local authorities in attaining the internationally agreed development goals, including the Millennium Development Goals;

(e) Contributing to more effective post-disaster and post-crisis relief, recovery and reconstruction;

(f) Financial and budgetary matters;

(g) Recommendations.

* A/63/150 and Corr.1

08-46186 (E) 170908

Contents

		Page
I.	Introduction	3
II.	Deepening the understanding of the impact of rapid urbanization	3
	A. Fuel and energy crisis	3
	B. Rising urban inequalities	4
	C. Cities and climate change	4
III.	Implementation of the medium-term strategic and institutional plan for 2008-2013	5
	A. Policies and strategies	6
	B. Enhanced normative and operational framework	6
	C. Excellence in management	7
	D. Lessons learned	7
IV.	Strengthening the catalytic and pre-investment role of the United Nations Human Settlements Programme	7
	A. Working with international and regional financial institutions	8
	B. Working with the private sector	9
	C. Strengthening water operators	10
	D. Mobilizing domestic capital through innovative financing mechanism	10
	E. Experimental reimbursable seeding operations	11
	F. Public/private partnership for low-income housing finance	11
V.	Strengthening the role and contribution of local authorities to attain the internationally agreed development goals	12
	A. Guidelines on decentralization	12
	B. Guidelines for access to basic services	13
	C. Financial management tools, the example of north-west Somalia	14
	D. Attaining the health targets of the Millennium Development Goals	14
	E. Training, human resources development and knowledge generation	15
VI.	Contributing to more effective post-disaster and post-crisis relief, recovery and reconstruction	17
VII.	Financial and budgetary matters	18
VIII.	Conclusions and recommendations	20

I. Introduction

1. The present report is submitted pursuant to paragraph 24 of General Assembly resolution 62/198, entitled "Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and the strengthening of the United Nations Human Settlements Programme (UN-Habitat)".

II. Deepening the understanding of the impact of rapid urbanization

2. The twin goals of the Habitat Agenda of "shelter for all" and "sustainable human settlements development in an urbanizing world" took on added significance in the course of 2008. The rapid rise in food and energy prices, the growing awareness of the consequences of climate change, the financial crisis associated with the collapse of the sub-prime mortgage market, and the devastating earthquakes, typhoon and flooding in a number of countries underscored the increasing importance of the human settlements dimension of sustainable development.

A. Fuel and energy crisis

3. Rapid urbanization is one of the contributing factors to the rise in food and fuel prices that marked 2008. The combined impact of rapid urbanization and globalization brings about irreversible changes in production and consumption patterns. These changes include the way we use land, water and energy, which are also required for the production and transportation of food.

4. This is particularly the case with poorly planned urban growth, which characterizes much of the urbanization process across the globe. While in developed countries, countries with economies in transition and parts of Latin America, urbanization no longer represents a demographic shift from rural to urban areas, it does involve, in many instances, urban sprawl, which not only competes with agriculture for land and water, but also greatly increases travel for people and goods and is thus very energy-intensive.

5. In most of the rest of the developing regions, which account for more than 80 per cent of global urban growth, urbanization involves a combination of urban sprawl and the proliferation of slums, both of which tend to encroach on agricultural land, forests and watersheds.

6. The urban poor, comprising about 1.2 billion slum dwellers, are among the most exposed victims of the current rising food and energy prices. In the immediate and short term, measures need to be put in place to assist the urban poor in the slums to access sufficient food. Effective targeting methodologies based and supervised by communities need to be devised within the framework of good urban governance strategies. Any long-term strategy to reducing the pressure on food prices will also need to encompass more effective strategies to promote sustainable urbanization.

B. Rising urban inequalities

7. The inflationary pressures of rising fuel and food costs have sparked social unrest and political protests in all regions. In the last few months, food riots and high fuel costs have affected major cities and countries across the globe.

8. Studies conducted by UN-Habitat in 2007-2008 showed that levels of inequality in cities were rising across the globe before the recent fuel and food crisis. In the high-growth economies of East Asia, urban income inequalities have risen steadily since the late 1980s. Urban inequalities have also been witnessed in low-income countries such as Nepal and Bangladesh. At the regional level, sub-Saharan Africa and Latin America have the world's highest levels of income and consumption inequality. These inequalities manifest themselves most starkly in cities where the poor rely on monetary means to access basic needs and services including food and water.

9. For low-income households in urban areas, food has always represented a major portion of household expenditures. Food insecurity and inflation in urban areas will undoubtedly worsen in the foreseeable future as the urban poor face the prospect of using a disproportionate percentage of their disposable income for food and transport, leaving little money for non-food items such as schooling, health and rent.

10. The consequences of prolonged inflation and high costs of fuel and food will cause more people living in urban areas to fall into the income poverty trap. This will have a dampening effect on overall economic growth. To avoid social unrest, many governments will increase public expenditure on food security at the expense of other social services. This will engender a vicious cycle of underinvestment in infrastructure, health, education and other services, which, in turn, will exacerbate poverty and inequality and pose new challenges for the attainment of the Millennium Development Goals.

C. Cities and climate change

11. With just half of the global population living in urban areas, cities are already consuming 75 per cent of the world's energy and are contributing to a similar proportion of all wastes, including greenhouse gas emissions. As urbanization and globalization continue apace, cities will become the front line actors in the carbon emissions and climate change arenas. UN-Habitat analysis shows that levels of urbanization and city size are not the key determinants of quantity of greenhouse gas emissions; rather, consumption patterns and lifestyles with regard to land-use and urban sprawl play a much more critical role.

12. Rational land use planning, green building codes and energy-efficient transport options have proven to date to be among the most effective measures that can be taken to reduce energy consumption and emissions. These measures, together with waste recycling practices, are among the most promising in terms of reducing the ecological footprint of cities and entire city regions.

13. Mitigation measures envisaged at the global and national levels have yet to be accompanied by concerted measures at the city and local levels. Immediate actions need to be taken to make cities more sustainable by revisiting land-use plans,

transport modalities, and building designs. There is a unique opportunity to bridge global efforts in emissions control with local efforts to improve the quality of life and the productivity of cities. Cities are, after all, the driving force of the economies, and what better measures can be taken than to reduce traffic congestion, improve air and water quality, and generally, reduce the ecological footprint.

14. Adaptation measures to reduce vulnerability have yet to recognize the need to plan the cities and settlements to prevent loss and destruction of lives and properties. Cities have to take preventive action and planning to offset the worst. Climate change issues have to be considered in urban planning, and planning capacities have to be strengthened.

15. There is no doubt that local authorities will be the front line actors in finding local answers to these global challenges. There are no one-size-fits-all solutions and each local authority will have to assess its own risks and vulnerability and plan accordingly, whether in coping with rising sea levels, cyclones, droughts, flooding and environmental refugees, in addition to already existing problems.

16. The issues related to sustainable urbanization were debated and highlighted at the regional level in a series of high-level ministerial meetings on housing and urban development, in Africa, Asia, Latin America and the Caribbean. A special meeting, held in 2008 in Bahrain, for West Asian countries was also organized in preparation for the high-level segment of Economic and Social Council with the theme of sustainable urbanization.

17. A key outcome of the regional meetings was a call for the Economic and Social Council to include an urban pillar as a cross-cutting issue to deal with spatial and physical dimensions of sustainable development.

III. Implementation of the medium-term strategic and institutional plan

18. The year 2008 marked the kick-start phase of the implementation of the medium-term strategic and institutional plan for 2008-2013 approved by the Governing Council of UN-Habitat at its twenty-first session in 2007. An action plan for implementation was subsequently endorsed by the subsidiary body of the Governing Council — the Committee of Permanent Representatives — in December 2008.

19. The plan is guided by a long-term vision of sustainable urbanization and a medium-term goal to help Member States put into place by 2013 the necessary policies, strategies and conditions to stabilize the growth of slums, and to subsequently reduce the number of slum dwellers. This ambitious goal, which is necessary to attain the human settlements-related Millennium Development Goals, is backed by a sharpened thematic focus and a partnership strategy designed to enable UN-Habitat to fulfil a robust catalytic and pre-investment role.

20. The anticipated outcomes of the start-up phase for 2008 include:

(a) A revised and updated set of substantive policies and strategies spearheaded by a global campaign on sustainable development, designed to enhance programme focus and alignment and client orientation;

(b) An enhanced normative and operational framework to provide a set of value-added policy and operational support services to Member States in attaining the human settlements-related Millennium Development Goals;

(c) A series of institutional reforms designed to set the stage for the progressive realization of excellence in management.

A. Policies and strategies

21. The new policy and strategy documents are spearheaded by a global campaign for sustainable urbanization. This campaign merges two previous campaigns on secure tenure and urban governance and addresses the adaptation and mitigation challenges of climate change.

22. The campaign is conceived as an advocacy tool to help UN-Habitat achieve the following objectives:

(a) Raise awareness of the need to include the urbanization and urban poverty agendas in national development plans and priorities;

(b) Disseminate a coherent and mutually reinforcing set of policy recommendations to Member States in support of socially inclusive and environmentally sound human settlements development.

B. Enhanced normative and operational framework

23. The global campaign for sustainable urbanization is accompanied by an enhanced normative and operational framework. This framework combines policy recommendations and tools emanating from the global campaign for sustainable urbanization with value-added services to support the efforts of Member States, United Nations country teams and the United Nations Development Assistance Framework (UNDAF) in attaining the human settlements-related Millennium Development Goals. The framework pools the expertise of UN-Habitat and its partners in policy and institutional reform, capacity-building, resource mobilization and project management in the key areas of housing and land, infrastructure and services, urban planning, management and governance, and human settlements finance.

24. A key instrument for applying the enhanced normative and operational framework at the country level is the Habitat country programme document. To date, country programme documents have been developed in consultation with national Governments and United Nations country teams in 30 countries in 2008.

25. Special attention was paid to the preparation of country programme documents as part of the "Delivering as One" pilots. These documents enabled the Governments concerned working together with United Nations country teams in their respective countries to mainstream human settlements and urban poverty issues in the UNDAF process and in national development plans.

C. Excellence in management

26. The implementation of the medium-term strategic and institutional plan as an effective instrument to support the efforts of Member States in attaining the human settlements-related Millennium Development Goals also requires the pursuit of management excellence. Implementation follows a phased approach involving a one-year kick-start phase for 2008, followed by a two-year roll-out phase for 2009-2010 and by a three-year scaling-up phase for 2011-2013. The year 2008 was devoted to putting in place the internal policies, strategies and instruments that will serve as the basis for the attainment of excellence in management.

27. The key elements of the kick-start phase include:

(a) Reviewing business practices to improve efficiency;

(b) Aligning recruitment with the focus areas of the medium-term strategic and institutional plan;

(c) Delegation of authority and accountability to improve effectiveness and transparency;

(d) Results-based management and knowledge management;

(e) Resource mobilization with a view to expanding the donor base.

28. Progress in the implementation of the action plan is reported regularly to the Committee of Permanent Representatives, the subsidiary body of the Governing Council. The action plan foresees a peer review process and an independent evaluation in early 2009.

D. Lessons learned

29. The implementation of the medium-term strategic and institutional plan coincides with emergence of new challenges in social and economic development and sustainable development. It is informed and shaped by global trends and issues, but remains firmly anchored in UN-Habitat's unique experience and expertise in working together with the public, private and civil society sectors at the city and community levels. While the plan is guided by and contributes to ongoing United Nations reform, it goes beyond the strict confines of results-based management. It attempts to link the work of the organization with higher order issues and outcomes in the areas of social equity, equality and justice. Under these circumstances, compliance with short-term standards and exigencies of system-wide performance is a constant challenge. This challenge needs to be recognized in allowing a greater degree of flexibility and a margin of risk to enable any given organization to contribute to the long-term goals and objectives of sustainable development.

IV. Strengthening the catalytic and pre-investment role of the United Nations Human Settlements Programme

30. A key objective of the medium-term strategic and institutional plan is to strengthen the catalytic and pre-investment role of UN-Habitat. UN-Habitat analysis shows that small towns and secondary cities are among the fastest growing

settlements in rapidly urbanizing countries, and that these settlements are among the least equipped in terms of institutional capacity to meet the demands of rapid growth, especially in the areas of water and sanitation and slum upgrading and prevention.

31. These trends led UN-Habitat to develop a methodology and propose integrated approaches to slum upgrading and pro-poor water and sanitation. These approaches combine normative and operational activities that are conceived and packaged as pre-investment initiatives to identify and prepare bankable projects. The methodology consists of applying lessons learned from good practice in policy reform, participatory planning and resource mobilization that have provided tangible evidence of how pro-poor slum upgrading and basic services can be implemented in an economically viable manner.

32. The approaches fall into three categories:

(a) Working with international and regional financial institutions;

(b) Working with the private sector;

(c) Working with domestic financial institutions.

A. Working with international and regional financial institutions

33. In Africa, collaboration with the African Development Bank (AfDB) has been instrumental in facilitating investment flows into African cities for basic infrastructure and services. Joint activities and initiatives have, to date, generated over $250 million in pipeline investments. During the period 2007-2008, collaboration with AfDB was further strengthened with joint initiatives in a number of countries, including Kenya and Mali. Agreement was also reached to focus on additional countries in the AfDB loan portfolio for 2008, including Tanzania, Mozambique, Rwanda, Uganda and Zambia. The programme is now operational in 18 cities in 15 countries. UN-Habitat is also working with AfDB to fast-track lending programmes in Zanzibar, United Republic of Tanzania.

34. In Ethiopia, partnership with the World Bank will entail a scaling up of demonstration projects in the area of water and sanitation implemented by UN-Habitat in Addis Ababa. Follow-up investment is expected to reach $60 million, which will specifically target the urban poor.

35. A recent partnership with the East African Community has provided a framework of collaboration to expand the Lake Victoria Region Water and Sanitation Initiative in an additional 15 towns in 5 countries, in partnership with AfDB. An investment proposal has been submitted to AfDB to provide access to safe drinking water for an estimated 133,000 persons and improved sanitation to about 15,000 persons. The interventions are at various stages of implementation and an in-depth impact assessment is programmed for the end of 2008.

36. In India, four cities of Madhya Pradesh have benefited from a $181 million loan from the Asian Development Bank (ADB) based on the catalytic role of UN-Habitat in supporting reforms in the water and sanitation sector, including policy directives and guidelines issued by the government of Madhya Pradesh on establishing gender-sensitive and community-based funding mechanisms.

37. In China, UN-Habitat forged a partnership with the city of Nanjing for a diagnostic study, which has become the basis for follow-up investment by ADB to improve the water and sanitation sector in the city.

38. In the Mekong River Basin, fast-track initiatives under the Mekong Region Water and Sanitation Initiative have set the stage for follow-up investments by ADB. Sector assessments and rapid situational analysis carried out by UN-Habitat have enabled Governments in the region to agree on priority settlements to benefit from a combination of external development assistance and national budgetary allocations for pro-poor water and sanitation.

39. In Asia, UN-Habitat is currently engaged in 47 towns and cities in five countries and is currently expanding its activities to Indonesia and Cambodia. The programme has provided a platform for policy dialogue and participatory planning involving all spheres of government and civil society. In Nepal, UN-Habitat was able to facilitate policy dialogue between civil society and government to bring about much needed changes in policy and institutional reform. As a result, the programme has directly benefited an estimated 440,000 people in terms of access to safe drinking water and improved sanitation.

40. In the Latin American and Caribbean region, UN-Habitat is forging a strategic partnership with the Inter-American Development Bank (IADB) to support the "Water for Cities" programme in the Latin American and Caribbean region. The programme started operations in Mexico and has received political support and financial contributions from the central Government for its first pilot project in the country. UN-Habitat, together with other United Nations agencies, also made a successful bid for the Spanish United Nations Millennium Development Goal Fund. The initiative is expected to generate up to $6.2 million for water projects in the country.

41. In Iraq, UN-Habitat has been partnering with the International Finance Corporation to study and address local constraints to housing supply in Iraq. This strategic partnership is looking at interventions in a number of related sectors such as construction and building materials and private sector real estate development to boost housing supply and avoid the future formation of slums.

42. In Albania, UN-Habitat implements a programme together with the Council of Europe Development Bank in order to strengthen municipal capacities for developing and managing the first social housing programme in decades. Some 1,100 social housing units will be financed under the new decentralized national framework.

B. Working with the private sector

43. A partnership agreement between UN-Habitat and Google.org was established in 2008. The purpose of the partnership, which is being piloted in Zanzibar, is to develop monitoring tools for water and sanitation and other utilities to be placed firmly in the public domain. This partnership will enable local authorities, water operators, other service providers and stakeholders to access geo-spatial information on service coverage and delivery with Google technological innovations, such as Google Earth. Technological innovation in this area is expected to greatly reduce the

cost and time involved in project identification and preparation for the provision of basic infrastructure and services.

C. Strengthening water operators

44. The ongoing water and sanitation sector reforms, particularly in developing countries, have provided opportunities for creating more efficient, customer-focused and autonomous water and sanitation utilities. However, water and sanitation utilities continue to face enormous challenges in meeting the ever increasing demands of growing populations. Fostering collaboration between water supply and sanitation utilities is a vital element in ensuring exchange of experiences between performing and non-performing utilities. The need for creating a mechanism for the collaboration of water utilities is highlighted in the "Hashimoto Action Plan", which was announced by the United Nations Secretary-General's Advisory Board on Water and Sanitation during the fourth session of the World Water Forum in Mexico.

45. One of the recommendations of the Action Plan is for the establishment of a mechanism to promote water operators partnerships. During the reporting year, important groundwork was laid in the establishment and operationalization of the Global Water Operators Partnerships Alliance, which was formally launched during the 2007 Stockholm World Water Week, and a framework for its governance and funding has been prepared. A programme manager for the Alliance is already on board, and recruitment of key staff for the Alliance secretariat, which is hosted by UN-Habitat, is ongoing.

D. Mobilizing domestic capital through innovative financing mechanism

46. The UN-Habitat Slum Upgrading Facility continued to field test innovative financing mechanisms in the four pilot countries of Ghana, Indonesia, Sri Lanka and the United Republic of Tanzania. The private sector, especially local commercial banks, is complementing the efforts of Governments and the urban poor communities of the four countries to design, prepare and implement "bankable" slum upgrading projects. In this regard, the Slum Upgrading Facility has helped to establish multi-stakeholder local finance facilities in three of the four pilot countries — Sri Lanka, Indonesia and Ghana.

47. The agreements between UN-Habitat and the local finance facilities have been finalized, and it is expected that the credit enhancements for pilot projects will become active in each of the three countries in late 2008. "Bankable" projects in each country have been identified, and extensive capacity-building work has been carried out to prepare local communities to reach a level where they can qualify for credit enhancements through the local finance facilities. The facilities will thus be able to use the credit enhancement funds to leverage commercial domestic finance and other funding support for the slum upgrading projects.

E. Experimental reimbursable seeding operations

48. While the above initiatives entail innovative financial arrangements and partnerships to leverage the resources of urban poor communities with those of international and domestic capital, they remain grant-based operations and remain, to a large extent, subject to project cycles rather than investment programmes.

49. The Governing Council of UN-Habitat, in approving experimental reimbursable seeding operations, opens a new window of possibilities and opportunities to apply innovative financial instruments to the financing of housing for low-income groups on a more sustainable basis.

50. Further to the outcome of an expert group meeting of international housing finance experts held in April 2008, UN-Habitat and the Committee of Permanent Representatives approved a set of operational procedures for engaging in experimental reimbursable seeding operations activities. These procedures will now be used by a steering and monitoring committee to select from a range of pilot projects for leveraging seed capital with domestic capital to finance pro-poor housing and urban development. The first meeting of the steering and monitoring committee will take place in September 2008.

F. Public/private partnership for low-income housing finance

51. In a parallel approach, a micro-mortgage financing initiative for low-income housing in developing countries starting in Latin American cities has been launched in partnership with UN-Habitat, the Global Housing Foundation and Merrill Lynch. The objective of the partnership is to offer the working poor segment of the world's 1 billion slum dwellers an opportunity to own a home that can be financed on a long-term basis through micro-mortgage instruments and, in the process, help develop or revive the local economy.

52. Working with UN-Habitat, local governments and other partners, the Global Housing Foundation will attempt to source suitable construction locations in each of the target communities. The Foundation will then identify and pre-screen qualified local developers and local lending institutions in each community. Partner local banks and lending institutions will make loans to finance low-income housing (within the range of $5,000 to $18,000). Following an appropriate agreed seasoning period and appropriate due diligence, Merrill Lynch will purchase a majority stake in these pools of performing loans, at fair market value, and will then use its global distribution platform to syndicate that risk into the market. UN-Habitat, within its mandate on Experimental Reimbursable Seeding Operations, mobilizes grant resources to provide credit guarantees on the portfolios on a 1 to 4 ratio to kick-start the process. It is envisioned that a $50 million guarantee loan to the Foundation will facilitate up to $200 million of financing by Merrill Lynch.

53. Local developers build the homes on an agreed profit basis and local banks provide the loans. The local banks qualify the home purchasers, originate the micro-mortgage and service the loan even after it is sold. Most of the local banks that originate the loans also provide the developer with the construction financing for the development. Once the originating bank pools $1 million of loans and seasons them for one year, they are eligible to participate in the Merrill Lynch financing programme. The homes are designed to meet a minimum standard for housing in

each locality and contain a bathroom, kitchen, individual rooms, clean running water, a septic system and electricity. Families currently living in slum areas will be selected on the basis of their qualifications to repay the micro-mortgage. Priority will be given to women-headed households. Those getting the mortgages can be teachers, nurses, taxi drivers or others who until now have not had a source of long-term financing to purchase a basic house and rise out of the slums. The initiative is focused on this segment of the slum dwellers, those who live in overcrowded temporary shelters and lack security of tenure, safe drinking water and adequate sanitation.

54. The initiative is expected to revitalize the local economy involving the construction of houses, creating local jobs, producing building materials and the circulation of money with the local banks. It is hoped that the initiative will become the premier global programme that transforms the lives of slum dwellers into proud homeowners. Work has already started in Nicaragua, Panama and El Salvador. It is hoped that about 1,000 homes will be completed by the end of the year.

55. UN-Habitat and the Global Housing Foundation will execute the initiative in close cooperation with the communities, local authorities and the Government ministries in the provision of land and infrastructure at an affordable cost. The initiative includes community development work and financial literacy for the selected families. It will be governed by and operate on the basis of respect for private property rights, the creation of secure lending practices, and, wherever possible, the promotion of gender equality and the empowerment of women by requiring title to the homes to be in the woman's name. It is a finance plus programme, with the promoters (Global Housing Foundation and UN-Habitat) closely building the capacity and financial literacy of borrowers to minimize, if not to avoid, default.

V. Strengthening the role and contribution of local authorities to attain the internationally agreed development goals

A. Guidelines on decentralization

56. In its resolution 21/3, the Governing Council approved the guidelines on decentralization. In doing so, it reiterated the critical importance of local authorities in implementing the Habitat Agenda and the human settlements-related internationally agreed development goals. The Governing Council also identified a number of key steps that need to be taken by UN-Habitat, Governments and partners such as United Cities and Local Governments, for ensuring effective adaptation and application of the guidelines for strengthening local governments.

57. Approval of the guidelines by the inter-governmental body represented a major milestone in the dialogue on decentralization that had been pursued for almost a decade. Not only did it mark a culmination of a long and extensive process of consultations at regional and global levels, it also presented a consensus in prioritizing a development agenda that a majority of Member States were already engaged with. Indeed, the culmination point of this process was very timely because it also coincided, on the part of UN-Habitat, with the adoption of the Medium-term Strategic and Institutional Plan, which, among other issues, underlined the need for

strong local responses and capacities for the purposes of attaining sustainable urbanization.

58. Since the approval of the guidelines, UN-Habitat has been working closely with Habitat Agenda partners to provide support to interested Member States in undertaking policy and institutional reform. Two meetings of the Advisory Group of Experts on Decentralization were convened in 2008 in India and Norway to develop a strategic framework for launching support services for the implementation of the guidelines.

59. The resulting strategy for the implementation of the guidelines consists of four major components that build on existing programmes and activities. These include:

(a) Advocacy and norm-setting;

(b) Capacity-building and institutional development;

(c) Networking and synergy building with key stakeholders;

(d) Monitoring and assessment.

60. One example of the application of the guidelines is ongoing in Iraq, where UN-Habitat, working together with other United Nations agencies, is supporting the implementation of the "local area development" programme and the development of decentralized housing strategies for three governorates. The local area development programme focuses on localizing target-setting for attaining the Millennium Development Goals. Training and capacity-building are currently ongoing in strengthening the capacity at the governorate level to implement the programme and the housing strategies. In a similar initiative, UN-Habitat worked with the United Nations Children's Fund in carrying out a comprehensive review and refinement of laws, policies, programmes and delivery capacities in the solid waste management sector. The review has led to a follow-up programme to build capacity for decentralized solid waste management practices.

B. Guidelines for access to basic services

61. The Governing Council endorsed, in its resolution 21/4, the proposal by UN-Habitat to initiate consultations for the formulation and adoption of a similar set of guidelines for "access to basic services for all". This represents a major step forward in combining a partnership approach with a rights-based approach in support of the attainment of internationally agreed development goals on health, nutrition, disease prevention, access to water and sanitation and other basic services. Draft guidelines were prepared in close consultation with the United Nations Institute for Training and Research, the International Labour Organization, the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization (WHO), and other relevant partners including the World Bank and United Cities and Local Governments. The draft guidelines will be further discussed by partners with a draft set of indicators at the fourth session of the World Urban Forum, prior to consultations with Member States.

62. The provision of basic services depends, however, to a large degree on the capacity of local authorities to deliver the services directly or to regulate their

delivery and provision by service providers. In all cases, financial management is required to ensure cost recovery and to mobilize resources for expansion and maintenance. An interesting case has been the example of putting in place such a system in war-torn Somalia.

C. Financial management tools, the example of north-west Somalia

63. UN-Habitat has been actively involved in building the capacities of municipal finance departments and establishing improved systems for public sector accounting and revenue collection by local authorities and water utilities in north-west Somalia. The approach links local economic development with land management, allowing for improved services based on increased municipal revenue from land and property taxes.

64. A geographical information system was used to establish a property database from a comprehensive property inventory carried out in Hargeisa in 2004 and 2005. The urban land information database was subsequently used to develop a computerized property taxation system. Municipal property tax invoices are now being prepared from this system. The implementation of the interlinked property database and automated taxation system resulted in a remarkable rise in municipal property tax revenue in Hargeisa, thus enabling the local authority to improve service delivery through a number of capital investment projects financed directly from municipal income. Improvements include the paving of roads, upgrading public markets, streetlights and refuse removal. In 2007, similar property surveys were carried out in Boroma and Berbera, with the aim of achieving enhanced municipal revenue collection and improved service delivery in 2008 and 2009.

65. The success of the initiative in Hargeisa led to similar initiatives in six other municipalities. Training courses in accounting and financial management were undertaken throughout 2006 and 2007, which led to improved revenue collection and service delivery in Burao, Gebiley, Boroma, Berbera, Erigavo and Laas Caanood.

66. In 2008, following a ministerial request, accounting and information management systems will be established in the Ministry of the Interior, the Magistrate of Accounts, and the Hargeisa Water Agency. UN-Habitat also envisages a fully fledged capacity-building intervention for the period 2009-2010, to be aligned with the United Nations Joint Programme on local governance and decentralized service delivery.

D. Attaining the health targets of the Millennium Development Goals

67. Research conducted by WHO and the United Nations Population Fund have reaffirmed the findings of UN-Habitat that health in urban settings in rapidly urbanizing countries is determined more by living conditions than by income. These conditions, known as the social determinants of health, are directly related to the prevailing conditions found in slums such as overcrowding, lack of access to water and sanitation and other basic services. [1]

68. These and other findings resulted in the appointment of the Executive Director of UN-Habitat to the WHO Commission on the Social Determinants of Health. The

WHO Kobe Centre, which hosts the Knowledge Network on Urban Settings, provides the technical inputs to this Commission.

69. Several meetings between UN-Habitat and WHO have resulted in a framework for collaboration focusing on: (a) generating evidence on urban health inequities; (b) setting up urban thematic groups at the national level; (c) establishing a city-to-city learning facility on urban health; and (d) working jointly towards a global forum on urban health in 2010.

70. A technical meeting was convened in Kobe, Japan, in July 2008, bringing together staff of UN-Habitat, the WHO Kobe Centre, WHO regional advisers, and partner institutions such as the United States Agency for International Development, research institutions and health NGOs. A strategic plan was developed with a view to organizing the World Health Forum to be convened in partnership with WHO in Kobe municipality in September and October 2010. The Forum will jointly celebrate World Health Day and World Habitat Day to promote the urban health agenda. The event will be marked by the release of a report on global urban health that will highlight the specific challenges of urban health in rapidly urbanizing countries.

E. Training, human resources development and knowledge generation

71. The International Urban Training Centre was officially launched by the Province of Gangwon, Republic of Korea, and UN-Habitat in 2008. The Centre is dedicated to training and capacity-building targeted at municipal authorities and their partners. The Centre was established to build the capacity of cities and towns nationally and in the Asian and Pacific region in support of the goal of sustainable urbanization. It aims to bridge the knowledge gap between academia, local and central Government by facilitating communication, professional networking, learning and exchange of information within Korea and at the international level. UN-Habitat supports the Centre primarily in the design and implementation of international training courses, the development of training material and the forging of partnerships with similar training institutions. UN-Habitat, the Institute for Housing and Urban Development Studies and the Centre joined forces to offer a first training course on strategic approaches to sustainable urbanization for city leaders and managers in the Asia-Pacific region.

72. The first edition of a two-week training course for mid-career professionals on sustainable communities was successfully completed in Helsinki. The course was organized jointly between Helsinki University of Technology, UN-Habitat and UNEP, and was funded by the Government of Finland. Key course topics included good governance for sustainable communities; risk and vulnerability reduction; and urban planning for sustainability. The Asian Institute of Technology in Bangkok and the University of Nairobi were identified as course venues for the coming two years. The course contributes to the implementation of the new strategic vision of UN-Habitat, through the preparation of reusable curricula to support education for sustainable urbanization.

73. In November 2007, UN-HABITAT organized and hosted an Expert Group Meeting on Cities in Climate Change in Nairobi, bringing together more than 50 participants from research institutions, local authorities, the private sector, and colleagues from different United Nations agencies. Based on the results of the meeting, UN-Habitat developed a global sustainable urban development network

with the start-up component initiative on cities in climate change. The initiative will focus on enhancing the adaptive capabilities and responsiveness of local government to the challenges of climate change by supporting the improvement of governance structures, promoting the participation of civil society, testing innovative financing and investment mechanisms, sustainable construction and building materials, and designing and implementing strategies and concrete action plans.

74. UN-Habitat has been supporting numerous normative and operational activities aimed at assisting Governments, local authorities and local communities to achieve the Millennium Development Goals, mainly target 10. The support is packaged in two programmes, the "Basic Urban Services" programme and the "Sustainable Urban Mobility" programme. UN-Habitat is currently facilitating the implementation of demonstration projects in 10 countries affecting over half a million people. A major area of focus is the documentation and dissemination of the experiences and lessons learned to support replication in other cities and countries.

75. *Participatory Budgeting in Africa: A Training Companion*[1] has been finalized and is available in English and French versions. The training companion has been designed as a campaign tool for innovative local governance, and to build capacity of local facilitators and decision-makers to carry out a participatory budgeting process in their respective localities. A trainer's guide for local economic development series has also been developed to assist trainers in the design and delivery of training workshops based on the *Local Economic Development Series*.[1] A gender equity and equality sourcebook[1] for local government training has been produced. The sourcebook covers a wide range of gender issues in local governments such as women's participation in local governments, land rights, urban planning, and gender-responsive budget initiatives.

76. In the course of 2007-2008 some 20 subregional training events involving over 600 participants were implemented in collaboration with national training institutions in Tanzania, Lesotho, Egypt, Rwanda, Haiti, Palestine and India. A regional "training of trainers" event was held in Asia on localizing the Millennium Development Goals through innovative leadership and community empowerment. Training on financial management and leadership also took place in the South Pacific region. In Africa, a regional workshop on participatory budgeting was held for eight countries.

77. UN-Habitat initiated in 2007 web-based distance learning as a tool to deliver training and capacity-building courses. The key objective is to compliment existing face-to-face training activities to generate wider delivery impact and to reduce direct costs related to training. A first course on key competencies for local elected leadership is now online and is being administered as part of the UN-Habitat's *Local Elected Leadership Series*.[1] UN-Habitat plans to expand online courses in the future covering different thematic areas that support sustainable urbanization in line with its Medium-term Strategic and Institutional Plan.

78. UN-Habitat partnered with the Simon Fraser University of Canada to deliver a course on strategic planning for sustainable community economic development. The interactive course on promoting local economic development through strategic

[1] See www.unhabitat.org.

planning was recognized by the Canadian Institute of Planners and EcoPlan International, which awarded it for excellence in local economic development.

VI. Contributing to more effective post-disaster and post-crisis relief, recovery and reconstruction

79. In May 2008, the Executive Director of UN-Habitat was invited by the Emergency Relief Coordinator and Under-Secretary-General for Humanitarian Affairs to become a Principal in the Inter-Agency Standing Committee.

80. This invitation provides a positive conclusion to recommendations by the Secretary-General in his reports to the General Assembly since 2005 urging the Inter-Agency Standing Committee to include UN-Habitat in its membership.

81. Following its June 2008 meeting, where UN-Habitat was warmly welcomed by the Chair and other members, the IASC working group expressed its interest in exploring the humanitarian dimensions of the challenges associated with rapid urbanization.

82. UN-Habitat fielded a large team of experts from its programme in Pakistan, to assist the Government of China and the United Nations country team in their efforts to recover from the devastating earthquake in Sichuan Province that occurred in May 2008. The lessons learned from a decade of UN-Habitat involvement in post-disaster recovery and reconstruction are most evident in its strategy for the people's process for recovery and reconstruction.

A. UN-Habitat support for the people's process for seamless recovery

83. In response to calls by Member States to assist people in reconstruction following conflicts and disasters, UN-Habitat has been implementing an approach whereby affected populations are placed at the centre of the recovery and reconstruction process. This process has proven to be effective in several post-disaster situations. It is characterized by an approach whereby the people who are directly affected by disasters are empowered to be equal partners with governmental authorities in the process of rebuilding their homes and livelihoods.

84. The people's recovery process is a seamless process between disaster relief and recovery. Relief and recovery start at the same time. It is an incremental process whereby families start by erecting emergency shelter in such a way that their immediate needs are integrated with their future needs for reconstruction and recovery. Technical advice in planning, building and construction is provided to ensure that reconstruction complies with acceptable standards for risk abatement.

85. In the Asia and Pacific region, the people's recovery process has been implemented in a number of countries, including Afghanistan, Indonesia, Maldives, Sri Lanka and Pakistan. For the Indian Ocean tsunami disaster-related projects in Sri Lanka, 4,000 families have so far completed their homes and a similar number of homes are under construction. In Pakistan, the process has contributed to the reconstruction of 600,000 housing units in the earthquake-affected areas. A key component of the process has been the training of over 55,000 engineers, masons and homeowners to participate effectively in "building back better".

86. In Afghanistan, through the post-conflict national solidarity programme, a similar process has been implemented in 3,300 villages in 9 provinces to facilitate community reconstruction and housing.

87. In August 2008, UN-Habitat successfully concluded its joint agreement with the International Federation of Red Cross and Red Crescent Societies (IFRC), providing support to the emergency shelter cluster, and to establish a shelter recovery coordination function within the early recovery cluster in Myanmar. This pilot activity, pairing the emergency shelter response capacity of IFRC with the shelter reconstruction expertise of UN-Habitat, is the basis for a longer-term partnership between the two agencies to ensure a smooth transition from emergency relief to sustainable reconstruction.

88. In 2007, UN-Habitat, in collaboration with an inter-agency group, provided support to upgrade five of the poorest settlements of internally displaced persons in Bossaso, Somalia, assisted in the reconstruction of the tsunami-damaged town of Xaafuun, and helped re-establish the provision of shelter and basic services in the cities of Garowe and Hargeisa. These interventions have helped over 50,000 internally displaced persons to regain a permanent home, to access basic services and to begin to restore their livelihoods. A key strategy that has been used across many different projects funded by different donors has been, wherever possible, to train people, especially women, among the refugees and internally displaced persons (IDPs) to undertake the work under community contracting frameworks. This not only provides a strong sense of ownership of the process of reconstruction leading to local governance structures and systems, it also helps restore local economic development and provides marketable skills for income-earning opportunities for the future.

89. Responding to requests from the Inter-Agency Standing Committee protection cluster in Geneva, UN-Habitat fielded several missions to the Democratic Republic of the Congo. These missions were able to ascertain the obstacles that have prevented refugees and IDPs from returning to their communities of origin. These obstacles are owed primarily to unresolved land and property loss. Subsequently, a new programme has been developed with seed funding from the Office of the United Nations High Commissioner for Refugees (UNHCR) to establish support and coordination on matters related to conflict and dispute over land and property loss, land restitution, and longer-term land administration capacity-building. The first teams will be deployed in September 2008 to Goma and Kinshasa.

90. UN-Habitat had embarked on the development of a series of tools and guidelines on behalf of the IASC global cluster system addressing post-disaster shelter options, post-disaster land administration guidelines and tools, and post-conflict land tenure guidelines and toolkit. These will be published and distributed through the Inter-Agency Standing Committee housing, land and property working group, led by UN-Habitat.

VII. Financial and budgetary matters

91. During 2007, the organization maintained its positive trend in voluntary contributions. The total amount received (including inter-organizational contributions), reached an all time high of US$ 153.3 million. Of the total income received, US$ 17.6 million accounted for non-earmarked contributions from 36

Governments and US$ 135.7 million for earmarked contributions from 33 Governments and inter-governmental donors, other public donors and United Nations agencies towards normative and technical cooperation activities at the country level.

92. In addition, there was a marked increase in the level of non-earmarked contributions by over 70 per cent from US$ 10.2 million received in 2006 to US$ 17.6 million in 2007, coinciding with the first UN-Habitat donor meeting held in Oslo in February 2007 and the approval of the Medium-term Strategic and Institutional Plan during the session of the Governing Council held in April 2007. However, the imbalance between the non-earmarked and earmarked contributions remains a challenge and will be addressed during the forthcoming UN-Habitat donor meeting in Seville, Spain. Clearly, non-earmarked contributions are more compatible with the need for the organization to implement a focused and prioritized work programme, and to manage its financial resources on the basis of predictable and stable income.

93. The aggressive fund-raising of the organization to capitalize its trust funds and programmes has continued to yield positive results. At the end of 2007, multi-year agreements had been signed with various donors totalling US$ 79 million towards the Water and Sanitation Trust Fund, US$ 8.4 million towards the Special Human Settlements Programme for the Palestine People and US$ 20.4 million towards the Slum Upgrading Facility. An increase in the level of funding towards technical cooperation trust funds was also acknowledged.

94. Following the approval of experimental reimbursable seeding operations by the Governing Council at its twenty-first session, in April 2008, an initial contribution of US$ 2.9 million had been received for experimental reimbursable seeding operations as at 31 December 2007.

95. The implementation of the resource mobilization and communication strategy as part of the Medium-term Strategic and Institutional Plan will seek to consolidate and broaden the donor base, to improve the balance between the general purpose and special purpose contributions on a predictable multi-year basis, to partner and leverage resources along the established thematic focus areas of the Medium-term Strategic and Institutional Plan, to strengthen the pre-investment role of the organization by mobilizing international and domestic investment for going to scale in slum upgrading and slum prevention and tapping non-conventional sources of funding. In this regard, adoption of the principle of assessed voluntary indicative scale of contributions would facilitate the mobilization of resources and broadening of donor base.

96. Although regular budget contributions constitute only 7 per cent of its total contributions, UN-Habitat relies on these contributions as they facilitate the effective implementation of a cohesive, prioritized work programme by providing the basic operating infrastructure of the organization and by funding critical normative activities of the work programme for which earmarked funding is not imminent. An increase in the regular budget resources of UN-Habitat and the United Nations Office at Nairobi, which remain relatively low, will be requested in the forthcoming budget submission to the Secretary-General for the biennium 2010-2011.

97. UN-Habitat is in the process of preparing a results-based consolidated budget for the biennium 2010-2011.

VIII. Conclusions and recommendations

98. **Global trends and issues, including climate change and the recent rise in food and fuel prices, have highlighted the importance of the Habitat Agenda in addressing some of the underlying causes and in mitigating their social, economic and environmental consequences. Rapid urbanization and poorly planned urban development are at the heart of the matter, which pose some important challenges, yet also provides some unique opportunities. The UN-Habitat Medium-term Strategic and Institutional Plan is well poised to help Member States seize these opportunities. Its sharp focus on socially inclusive housing and environmentally sound and participatory urban development provides a solid blueprint for attaining the internationally agreed development goals for half of the world population, which is now living in cities. The plan also represents a concerted catalytic and partnership approach designed to leverage public and private investments for affordable housing and basic infrastructure and services through the use of innovative financing mechanisms that leverage the efforts of people with public expenditures and the resources of the marketplace.**

99. **The implementation of the plan spans six years. However, the start-up period is critical to this process. The experimental reimbursable seeding operations will take place simultaneously and over a similar period of time. Together, the Medium-term Strategic and Institutional Plan and experimental reimbursable seeding operations represent a bold attempt by the international community to come up with a truly concerted and focused approach to supporting the implementation of the Habitat Agenda.**

100. **Most of the elements are already in place and others are in the pipeline. These elements include the normative instruments and guidelines that have been recently adopted and applied, lessons learned from over two decades of experience in the coordinated implementation of the Habitat Agenda, and rising awareness on behalf of Member States of the need to combine pro-poor policies with good governance.**

101. **During this critical period that is characterized by innovation and matched by commitment to institutional reform, it is important that the resource base of UN-Habitat be broadened and commensurate with recent decisions and recommendations of the Governing Council and the General Assembly.**

102. **The Human Settlements Foundation offers a unique opportunity for Member States to reduce urban poverty. Members States in a position to invest in the Foundation will be part of an important exercise in innovation and partnership, helping to set precedents from which other institutions can learn and build upon. Contributions to the Foundation will help local actors create new instruments for affordable housing and urban infrastructure. Voluntary contributions of Member States will enable local partners to combine grants for technical assistance with reimbursable seeding operations. In this regard, the**

adoption of the principle of assessed voluntary indicative scale of contributions would facilitate mobilization of resources and broadening of donor base.

103. **Governments in a position to do so and other public and private entities are encouraged to contribute to the capitalization of UN-Habitat and the Human Settlements Foundation as an effective means of providing financial and seed capital support to slum upgrading, slum prevention and pro-poor water and sanitation in urban areas.**

United Nations A/63/292

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to education

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to education, Vernor Muñoz, submitted in accordance with Human Rights Council resolution 8/4.

* A/63/150 and Corr.1

08-46192 (E) 090908

Report of the Special Rapporteur on the right to education

Summary

The present report is submitted pursuant to resolution 8/4 in which the Human Rights Council renewed the mandate of the Special Rapporteur on the right to education and requested him to submit a report to the General Assembly.

For his first report to the General Assembly and because of strict time constraints concerning the submission of reports to the General Assembly, the Special Rapporteur will present a brief history of the mandate and the topics covered by him and his predecessor over the past years, as well as a more detailed presentation on the topic of his thematic report submitted to the Human Rights Council in 2008 on education in emergency situations.

The Special Rapporteur on the right to education has identified emergencies as a source of serious violations of the right to education, one that currently affects a large number of people. By emergency, the Special Rapporteur means a situation arising out of armed conflict or natural disaster.

In his last report to the Human Rights Council, the Special Rapporteur assessed the consequences of emergencies and the effect of recent trends on the place of education in emergencies. He surveyed the legal and political framework that in part determines the international community's response to emergencies and attempts to clarify the responsibilities of those involved, and tried to identify the main education providers. Finally, the Special Rapporteur made a number of general recommendations and recommendations to States, donors, intergovernmental organizations and civil society organizations.

I. Introduction

1. The mandate of the Special Rapporteur on the right to education was established by the Commission on Human Rights in its resolution 1998/33, entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights", which included the right to education.

2. In 1998 Katarina Tomasevksi (Croatia) was appointed as Special Rapporteur. Her initial three-year mandate was renewed for a further three-year period in 2001 by the adoption of the first resolution of the Commission on Human Rights specifically devoted to the right to education (resolution 2001/29).

3. The current mandate holder, Vernor Muñoz Villalobos (Costa Rica) was appointed in 2004. Since that date the mandate has been renewed by the Commission on Human Rights in its resolution 2004/25, extended by the Human Rights Council in its decision 1/102 and renewed for a further three years in 2008 by Human Rights Council resolution 8/4 of 18 June 2008.

4. From 1998 to 2007 the mandate holder was requested to report annually to the Commission on Human Rights (later the Human Rights Council). In its resolution 8/4, the Human Rights Council requested the mandate to report also to the General Assembly. The present report is accordingly submitted to the Assembly.

5. Strict time constraints on the submission of reports to the General Assembly allow the Special Rapporteur to offer in his initial report only this brief review of the mandate and the work undertaken to date by its holders. Greater attention will also be paid to the most recent report, "Education in emergency situations", submitted to the Human Rights Council in 2008.[1]

II. The mandate to date

Work undertaken

6. As the normative content of the right to education was undeveloped at the time of her appointment, and as Ms. Tomasevksi was the first mandate holder, her focus was necessarily broad. While recognizing the lack of a global common understanding and language on the right to education, she proposed and elucidated in the series of her annual reports[2] an analytical framework to evaluate its respect, protection and realization. Her analytical framework, used to measure the advancement of a normative framework, is commonly referred to as the "4-A scheme" (education should be available, accessible, acceptable and adaptable), a scheme since adopted by the Committee on Economic, Social and Cultural Rights.

7. Ms. Tomasevksi further sought to identify, make known and offer solutions to obstacles to the fulfilment of the right to education and in so doing addressed the

[1] A/HRC/8/10.

[2] E/CN.4/1999/49, E/CN.4/2000/6, E/CN.4/2001/52, E/CN.4/2002/60, E/CN.4/2003/9 and E/CN.4/2004/45.

impact of macroeconomic policies, poverty, gender and other forms of discrimination.

8. The necessity of mainstreaming human rights into all international strategies, and the manner in which they are closely interlinked, was raised in her reports, as was her consequent dialogue with the World Bank. The specific aim of the dialogue was to encourage the mainstreaming of human rights into the World Bank policies, the focus there being the promotion, guarantee and right to free and compulsory primary education.

9. In her final report to the Commission on Human Rights, Ms. Tomasevksi emphasized the importance, and thus the need for continuous assessment, of the work carried out on the making of economic, social and cultural rights with a focus on the right to education, subject to jurisdiction.

10. With the benefit of an increasingly accepted and utilized normative and analytical framework on the right to education, the current mandate holder, Vernor Muñoz Villalobos, has been able to address in greater detail specific issues in the four reports he has submitted to date, first to the Commission on Human Rights and later the Human Rights Council. In his initial report,[3] he continued the discussion initiated by his predecessor on strengthening the human rights imperative of education. He further encouraged a shift from education policies that see education as an economic good and service to those who recognize education as a right, and re-emphasized the right to a free and compulsory primary education.

11. In his 2006 report,[4] the Special Rapporteur linked the need for a shift of public policies towards the integration of human rights-based provision of education into programmes to ensure girls' access to education, in turn closely linking that right to Goals 2 and 3 of the Millennium Development Goals: universal primary education and gender equality. The report addressed the socio-cultural context of gender discrimination and denounced the negative impact on education, especially on that for girls, of the persistently held view of education being a service rather than a human right. It insisted on the importance of ensuring not only the access of girls to school but also their completion of the education cycle.

12. Disability was found to be a major obstacle to the fulfilment of human rights generally and to education specifically. To tie in with the adoption of the 2007 Convention on the Rights of Persons with Disabilities, the Special Rapporteur therefore undertook research and engaged in dialogue with States and other relevant stakeholders on the issue of disability and education. His 2007 report[5] emphasized the right of persons with disabilities to inclusive education, a right frequently denied, thus contributing to persistent and lifelong exclusion from society.

13. The report also highlighted the fact that inherent within inclusive education is the recognition that it is possible for all children and young people, regardless of their situation or differences, to learn together. As with all preceding reports, it ended with a series of recommendations for legislative, policy and financial measures, the adoption of which would move forward the fulfilment of the right to education.

---

[3] E/CN.4/2005/50.

[4] E/CN.4/2006/45.

[5] A/HRC/4/29.

14. The Special Rapporteur's most recent report on emergency situations will be discussed in greater detail below.

15. The mandate holders have sought to engage with and maintain active participation and dialogue with all relevant stakeholders, including Governments. For example, the preparation of the thematic reports included the distribution of a questionnaire to all Governments, intergovernmental organizations and non-governmental organizations seeking information on relevant regional, State and local policy and legislation and its implementation.

16. The discharge of the mandate of the Special Rapporteur is further facilitated by formal dialogue during fact-finding country visits. Seeking an equitable geographical spread, these visits enable the collection of information, oral and written, from diverse but country-specific sources and interaction with those sources, and specifically allows for frank and pertinent discussions with Governments. The likelihood of implementation of recommendations addressed to the most relevant actors (including, for instance, Governments, intergovernmental agencies, donors, non-governmental organizations) in each subsequent report is therefore increased.

17. Visits to the following countries were made by the initial mandate holder (in chronological order): Uganda;[6] United Kingdom of Great Britain and Northern Ireland — England;[7] United States of America;[8] Turkey;[9] Indonesia;[10] United Kingdom of Great Britain and Northern Ireland — Northern Ireland;[11] China;[12] and Colombia;[13] and the current holder to: Botswana;[14] Germany;[15] Morocco;[16] Malaysia;[17] and Bosnia-Herzegovina.[18] Guatemala was visited in July 2008.

18. The Special Rapporteur also engages in dialogue with specific States concerning communications of alleged violations of the right to education. He receives information on alleged violations from a range of sources, including national, regional and international non-governmental organizations, as well as intergovernmental organizations. If, following enquiries, the information is considered reliable and credible, he may address the Government concerned, either together with other relevant special procedures or independently. He will invite comments on the allegation, seeking clarification, recalling relevant obligations under international law and requesting information on steps being taken by those concerned to redress the situation in question. In transmitting allegations and urgent appeals, he does not judge the merits of any case, nor does he support the opinion of the persons on behalf of whom he intervenes.

---

[6] E/CN.4/2000/6/Add.1.
[7] E/CN.4/2000/6/Add.2.
[8] E/CN.4/2002/60/Add.1.
[9] E/CN.4/2002/60/Add.2.
[10] E/CN.4/2003/9/Add.1.
[11] E/CN/4/2003/9/Add.2.
[12] E/CN.4/2004/45/Add.1.
[13] E/CN.4/2004/45/Add.2.
[14] E/CN.4/2006/45/Add.1.
[15] A/HRC/4/29/Add.3.
[16] A/HRC/8/10/Add.2.
[17] A/HRC/8/10/Add.3 (to be issued)
[18] A/HRC/8/10/Add.4.

III. The right to education in emergency situations

19. The most recent thematic report of the Special Rapporteur, entitled "The right to education in emergency situations" was submitted to the Human Rights Council at its June 2008 session.[19] The subject chosen was emergency situations, either natural disasters or situations of conflict, which have been identified as a source of serious and increasingly frequent denial of the right to education, affecting also increasingly high numbers of people. Although it may often seem geographically or temporarily distant, no region, no section of the world's population can confidently assume it will not be touched, directly or indirectly, by these emergency situations.

20. The aim of the report was to highlight the most notable challenges to the right to education in emergency situations, to identify those with principal responsibility for its implementation, to consider innovative approaches and lessons learned, and to offer recommendations as to how implementation of the right to education might be improved in such emergencies.

21. Education in emergencies is situated within an international legal framework that is relatively straightforward. The right to education is reiterated in international human rights and humanitarian legal instruments and it is not suspended in times of emergency, irrespective of the legal status (i.e., refugee, internally displaced, child combatant) of those concerned. Specifically, attacks on buildings devoted to education are now viewed, under article 8, paragraph 2 (e) (iv), of the Rome Statute of the International Criminal Court, as war crimes. The international community is urged to take note of the importance attached to education in the Rome Statute and to make greater efforts to end the frequent impunity for persons and armed groups directly targeting violence at schools, students and teachers.

22. More generally, as parties to international treaties, States (with international cooperation where necessary) have the primary legal duty to implement that right even if lacking the necessary capacity. In practice, assistance is frequently provided by numerous agencies dedicated to educational assistance. While such assistance is vital, it has often been associated with differing agency priorities or capacities and poor coordination.

23. The international political framework is less straightforward. Particularly welcome, however, is the implication in the 2000 Dakar Framework for Action on Education, of recognition of a collective responsibility of the international community to meet the needs of education systems, by 2015, affected by conflict, natural calamities and instability. This is supplemented by State commitments arising under the 2000 Millennium Development Goals, which focus on the goal of access to free and compulsory primary education, again by 2015. The language of education as a "right" embedded within the international legal framework is, however, largely absent in those political commitments.

24. Despite that absence, assistance by the international community — through intergovernmental and bilateral agencies, bilateral donors, and non-governmental organizations — has supported some States lacking the requisite capacity to move towards ensuring provision of education in situations of emergency. The recognition of an increased need for a harmonized framework to coordinate the activities of the various actors involved and also to promote their accountability has led to the

[19] A/HRC/8/10.

development of Minimum Standards for Education in Emergencies, Chronic Crisis and Early Reconstruction, spearheaded by the Inter-Agency Network on Education in Emergencies. Despite evidence of effective application of the Standards in certain situations of conflict and natural disasters, they remain underutilized. The Special Rapporteur therefore urges their increased dissemination and use as a basis for the educational activities that form part of each humanitarian response.

25. Effective implementation of education provisions in emergency situations also requires an understanding of its context. To some extent, however, a full understanding of its significance remains elusive. The reasons for it vary but include the fact that statistics on the numbers of and differentially affected populations remain imprecise and inadequate. Further, intervention priorities traditionally have been based on the perception (now increasingly challenged) that education is a development rather than humanitarian activity. That has led to only a relatively recent focus of the international community on education in emergency situations, reflected also in research, literature and learning on the issue. In addition to and of specific relevance to situations of conflict, is the lack of conceptual clarity on the relationship between education, conflicts and peacebuilding.

26. The challenges to an adequate understanding of context, however, cannot detract from the persistent identification by communities living in emergency situations of the priority they attach to the necessity of the provision and/or continuation of education. Their identification of education as a priority, standing alongside those of food, health and shelter, should be noted and acted upon by the international community.

27. Although statistics are incomplete, they suggest that the number of children affected by emergency situations is considerable. In 2003 the United Nations Children Fund estimated that 121 million children were affected by armed conflict alone.[20] A review one year later by the Women's Commission for Refugee Women and Children estimated the number of children and adolescents affected by armed conflict and without access to formal education to be at least 27 million, most being internally displaced persons.[21]

28. The statistics that exist on natural disasters indicate that while they may cause significantly fewer direct deaths than armed conflicts, they may also affect directly and indirectly up to seven times more people and, most troubling, are increasing in their frequency.[22]

29. In all emergency situations, the number of persons with disabilities tends to rise. They are consequently exposed to not only the trauma of the emergency itself, but also to discrimination and even greater hardship than might otherwise be the case, including greatly reduced access to educational opportunities.

30. Statistics which tend to emphasize school enrolments and dropout rates are inadequate to show the full effect of emergency situations on education; it frequently results in its interruption, delay or denial. Statistics fail to show, for

[20] UNICEF, *The State of the World's Children, 2004: Girls, Education and Development* (New York, 2004).

[21] Women's Commission for Refugee Women and Children, *Global Survey on Education in Emergencies* (New York, 2004).

[22] Burde, D., *Education in crisis situations: mapping the field.* Basic Education Policy Support activity (United States Agency for International Development, New York, 2005).

instance, the destruction of educational infrastructure, deaths of staff, attacks against school buildings, increasingly brutal attacks against teachers, children and parents (often gender-specific), both within and outside schools, the recruitment of child soldiers from classrooms, the impact of psychological trauma, fear and stress that can impair learning ability, motivation and mental health, denial of access or inappropriate learning processes for people with disabilities and indeed increased multiple discrimination for already marginalized groups.

31. It is possible to identify populations specifically and differently affected by emergency situations: refugees and returnees, internally displaced persons, women and girls, child soldiers and combatants, persons with disabilities, and young people and adolescents.

32. The Office of the United Nations High Commissioner for Refugees largely determines the educational options of refugees. It has emphasized the principal aim of its education programme to ensure successful repatriation and reintegration of returnees. Numerous obstacles, often financial, result in mixed results.

33. Up to 90 per cent of internally displaced people are thought to be denied education. One reason is the lack of a specific international agency mandated to oversee its provision, another being a not uncommon lack of commitment by the authorities. Their needs should not be ignored.

34. The targeting and discrimination against women and girls in emergency situations combined with their pre-existing vulnerability to discrimination is often reflected in their decreased and often inappropriate educational opportunities. It is imperative that, with the active participation of women, strategies are developed to secure for girls in particular their psychological and mental integrity, and curricula appropriate to their needs and rights.

35. Addressing the recruitment of children into formal and informal armed forces has been the focus of much international attention. Despite positive examples of international and local efforts to intervene and ensure their demobilization, their subsequent integration into communities and educational programmes in particular often remain inadequate in number, relevance and quality. That situation could be redressed through increased resources and research, ensuring the participation of children affected.

36. Particular attention must, however, be paid to children with disabilities, who even in times of non-emergency face exclusion from and discrimination within education. Their specific and additional needs to ensure inclusion are frequently overlooked in times of emergency.

37. The Special Rapporteur notes that there has been a rise in experimental and alternative forms of providing education often targeted at young people and adolescents who are not addressed by the many efforts that tend to focus on primary education. Although these initiatives have met with mixed reception and success, Governments and donors may learn much from them and, where appropriate, may support them.

38. Different experiences and educational needs of affected populations, combined with varying capacities of States to respond to those needs, introduce complexities into provision of education in emergency situations. **The Special Rapporteur therefore recommends that the international community intensifies its search**

for models and examples of best practices. If based more specifically on an increased use of qualitative research methodologies, they will capture differential needs and contribute to the provision of education that is available, accessible, acceptable and adaptable for all. The Special Rapporteur recommends curriculum design which, in situations of conflict, should be based on a detailed analysis and understanding of previous education systems, and more generally ensure the participation of diverse learners, their needs and rights, and include respect for and empowerment of diversity. It is only in this way that the provision of education will serve to contribute to peaceful coexistence.

39. **The Special Rapporteur welcomes the recent creation of the Inter-Agency Standing Committee Education Cluster. As noted above, there has been a traditional distinction between humanitarian and development assistance, with education falling within the development agenda. International efforts in emergency situations consequently focused primarily on the provision of food, health and shelter with little attention being paid to education and the vital role it plays in the overall welfare of every person irrespective of their situation. The Education Cluster demonstrates that this distinction is now formally challenged, a challenge endorsed by the Special Rapporteur. To that end, he recommends that the right to education in emergency situations be recognized by States, donors, multilateral agencies and organizations as an integral part of their humanitarian response. Close attention must also be given to the future development of the Education Cluster, its collaborations and influence so as to ensure that the distinction is finally ended.**

40. **Donors, irrespective of their form, are identified as serving a vital role in this development. The Special Rapporteur recognizes that prioritizing and targeting limited resources is invariably difficult and that there are exceptions to the observations he makes on the right to education. Nonetheless, there is persistent evidence that donors dismiss education as a priority in emergency situations resulting in limited and inadequate resources, failure to honour the full funding promises when they are made; and particularly important, failure to support States that most demonstrably require assistance. With those observations in mind, the Special Rapporteur recommends that donors formally include education in all their humanitarian assistance plans and increase their education allocation to at least 4.2 per cent of total humanitarian assistance in line with identified need.**[23]

41. **Education is a human rights imperative. It is life-sustaining and life-saving, yet denied to many. The Special Rapporteur therefore recommends to the international community — including States, donors, multilateral agencies, international and national non-governmental organizations, adults and children alike — that it intensify its efforts, its learning, its cooperation and coordination so as to contribute to a future in which the right to education is realized, respected and protected in all situations, emergency or otherwise, and for all people.**

---

[23] International Save the Children Alliance, *Last in Line, Last in School: How donors are failing children in conflict-affected fragile States, 2007* (London, 2007).

United Nations A/63/293

General Assembly

Distr.: General
15 August 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratoriums on the use of the death penalty

Report of the Secretary-General

Summary

The present report surveys respect for the rights of those sentenced to death as set out in the international human rights treaties and the guidelines established by the Economic and Social Council in 1984. Drawing on contributions of Member States, the report surveys various motivations for establishing a moratorium on or abolishing the death penalty, as well as those for retaining the death penalty. It also includes up-to-date statistical information on the worldwide use of the death penalty, including moratoriums established in States that have not abolished this form of punishment, together with relevant developments since the sixty-second session of the General Assembly. The report concludes by confirming the global trend towards abolition of the death penalty, the important role played by moratoriums in those States that seek to abolish it and possibilities for further work on the issue.

* A/63/150 and Corr.1.

08-46215 (E) 110908

Contents

		Page
I.	Introduction	3
II.	Global use of the death penalty	4
	A. Statistics	4
	B. Developments since the adoption of resolution 62/149	4
	C. Trends	5
III.	Views reported on the death penalty	7
	A. Reasons for abolition or establishing a moratorium	7
	B. Reasons for retaining the death penalty	8
	C. The death penalty as a foreign-policy theme	9
	D. Views on the process towards abolition	10
IV.	Protection of the rights of those facing the death penalty	11
	A. Use only for the most serious crimes	11
	B. Principle of legality	12
	C. Specific groups	12
	D. Clear evidence	14
	E. Use pursuant to a final judgement and a fair trial	14
	F. Right of appeal	15
	G. Seeking pardon	16
	H. Stay of execution pending appeal or pardon	17
	I. Minimum suffering	17
V.	Conclusions and recommendations	18

I. Introduction

1. In resolution 62/149, entitled "Moratorium on the use of the death penalty", the General Assembly expressed its deep concern about the continued application of the death penalty and called on all States that still maintain the death penalty: (a) to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50; (b) to provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty; (c) to restrict progressively the use of the death penalty and reduce the number of offences for which it may be imposed; and (d) to establish a moratorium on executions with a view to abolishing the death penalty. The Assembly also called on States that have abolished the death penalty not to reintroduce it.

2. In paragraph 4 of that resolution the Assembly requested the Secretary-General to report to it on the implementation of the resolution. On the basis of that request, the Office of the United Nations High Commissioner for Human Rights on behalf of the Secretary-General, sent notes verbales to all Member and observer States on 17 March 2008 requesting relevant information to enable the Secretary-General to prepare his report. Input was received from 51 Member States.[1] Further information was provided by non-governmental organizations.[2]

3. In submitting the present report, the Secretary-General draws the Assembly's attention to additional relevant information presented in his reports on the death penalty to the Human Rights Council[3] and his quinquennial reports to the Economic and Social Council on capital punishment.[4]

4. Attention is also drawn to previous resolutions adopted by the General Assembly in relation to the death penalty. In its resolution 2857 (XXVI) of 20 December 1971 the Assembly affirmed, that

> in order to fully guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.

That objective was reaffirmed by the Assembly in its resolution 32/61 of 8 December 1977, in which it also expressed the desirability of continuing and

---

[1] Albania, Algeria, Andorra, Argentina, Austria, Barbados, Belarus, Belgium, Bhutan, Bosnia and Herzegovina, Botswana, Canada, Chile, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Greece, Guatemala, Ireland, Italy, Kuwait, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Mauritius, Moldova, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia and Venezuela (Bolivarian Republic of). The original contributions are available for consultation at the Secretariat.

[2] American Civil Liberties Union, Amman Centre for Human Rights Studies, Amnesty International, Commonwealth Human Rights Initiative, Hands off Cain, Human Rights Watch and Japan Federation of Bar Associations.

[3] The most recent being A/HRC/8/11.

[4] The most recent being E/2005/3.

expanding the consideration of the question of capital punishment by the United Nations.

II. Global use of the death penalty

A. Statistics

5. The General Assembly's call for a moratorium on executions with a view to abolishing the death penalty needs to be considered in the light of the current practice among Member States regarding the death penalty. Following the practice adopted in quinquennial reports, the present report classifies countries as completely abolitionist, abolitionist for ordinary crimes, de facto abolitionist or retentionist. Countries that are abolitionist for all crimes, whether in peacetime or in wartime, are regarded as completely abolitionist. Countries that are regarded as abolitionist for ordinary crimes are those that have abolished the death penalty for all ordinary offences committed in time of peace. In such countries, the death penalty is retained only for exceptional circumstances, such as those that may apply in time of war for military offences, or for crimes against the State, such as treason. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more are considered de facto abolitionist. All other countries are defined as retentionist, meaning that the death penalty is in force and executions do take place, although in many retentionist countries such executions might be quite rare.

6. As at 1 July 2008, 141 countries had abolished the death penalty in law or practice. Of those, 93 are completely abolitionist, 10 are abolitionist for ordinary crimes only and a further 38 can be considered de facto abolitionist. The remaining 56 countries and territories retain and practise the death penalty.

7. Reliable figures on the application of the death penalty are difficult to obtain because a number of States retaining capital punishment do not provide relevant statistics. Estimates of the minimum figures of people executed in 2007 range from 1,252[5] to over 8,000,[6] in 21 to 24 countries. These are minimum figures; the actual number of executions is assumed to be much higher. In its resolutions on the death penalty,[7] the Commission on Human Rights called upon States that maintain the death penalty to "make available to the public information with regard to the imposition of the death penalty and to any scheduled execution".

B. Developments since the adoption of resolution 62/149

8. There have been a number of developments in the use of the death penalty since the adoption of resolution 62/149 by the Assembly on 18 December 2007. One country, Uzbekistan, abolished the death penalty for all crimes, effective as from 1 January 2008. Honduras, which had already abolished the death penalty, ratified the Second Optional Protocol to the International Covenant on Civil and Political

[5] Amnesty International

[6] Hands off Cain, *The Death Penalty Worldwide*, 2008.

[7] The last such resolution being resolution 2005/59.

Rights in April 2008. In the same period, no countries have reintroduced the death penalty.

9. A number of States are in the process of abolishing or considering abolishing the death penalty. In February 2008, the Legislation Committee of the Russian State Duma submitted a bill to the lower house of parliament that would officially abolish the death penalty. In 2008 Poland commenced the process of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. Latvia reports that on 19 May 2008 its parliament endorsed a law allowing the ratification of Protocol 13 to the European Convention on Human Rights. Chile reports that there are currently several bills before its congress providing for abolition of the death penalty, as well as draft agreements aimed at the ratification of international instruments that impose similar obligations. These include: (a) an amendment to the Constitution; (b) a bill to eliminate the death penalty from the code of military justice; (c) a procedure leading to ratification of the Second Optional Protocol of the International Covenant on Civil and Political Rights; and (d) a draft agreement to ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

10. As reported by the Government of Cuba, on 28 April 2008 the President commuted a large number of death sentences to prison terms. According to Amnesty International, about 50 individuals were reprieved, with only three remaining on death row. On 14 March 2008, the President of Guatemala vetoed a law adopted by parliament that proposed the termination of the country's moratorium on the death penalty, which has been in place since 2000. In doing so the President stated, that the reintroduction of the death penalty would be contrary to article 4 (3) of the American Convention on Human Rights, which prohibits reintroduction in States that have abolished the death penalty. In the United States of America, following the decision of the Supreme Court to consider the constitutionality of lethal injection as a method of execution in *Baze v. Commissioner of the Kentucky Department of Corrections*, a de facto moratorium on executions lasted from September 2007 until the Court rejected the petitioners' arguments in April 2008. Also in the United States, an execution took place in May 2008 in the state of Georgia. Trinidad and Tobago reported that, pending the decision of the High Court in *Dottin v. The Attorney General*, there is a stay on the execution of any prisoner who was on death row on 7 July 2004, that being the date on which the Privy Council overturned its earlier jurisprudence on the mandatory nature of the death penalty for murder.

11. In a note verbale addressed to the Secretary-General dated 11 January 2008, the Permanent Missions of 58 Member States to the United Nations in New York expressed, their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law".[8]

C. Trends

12. Trends in figures on the application of the death penalty can be gleaned from the quinquennial reports of the Secretary-General, as updated by the Secretary-General's report to the Human Rights Council and its predecessor, the Commission

[8] A/62/658.

on Human Rights. The quinquennial reports have been prepared at five-yearly intervals since 1975, covering the period since 1969. However, until the sixth quinquennial report, covering the period from 1994 to 2000, figures reflected only those reported by Member States. As the level of reporting was relatively low (particularly among retentionist States), the sixth report relied on information derived from a variety of other sources beyond governmental responses, and included figures for the situation at the beginning of the reporting period (1994) and at the end (2000). The quinquennial reports thus provide comparable figures from 1994 onward.

Figures from quinquennial reports

Reporting period ending	*Abolitionist*	*Abolitionist for ordinary crimes only*	*De facto abolitionist*	*Retentionist*	*Reintroductions*	*Resumed executions*
1993	55	14	30	94	4	0
2000	76	11	36	71	1	9
2003	79	12	41	62	0	3
July 2008	93	10	38	56	0	1

13. Four States reintroduced the death penalty in the quinquennium 1989-1993, but no de facto abolitionist States resumed executions. From 1994 to 2000, one State reintroduced capital punishment, and nine countries ceased to be de facto abolitionist by resuming executions. No abolitionist countries reintroduced the death penalty during the period 1999-2003, and three de facto abolitionist countries resumed executions.

14. As has been noted by successive reports of the Secretary-General on the death penalty, the global trend is towards abolition of capital punishment.[9] This trend has been constant since the first report of the Secretary-General, in the 1970s. In 1976, 16 States could be described as totally abolitionist. Today the figure is 93. In the early 1990s, the rate of abolition (at almost four States a year) was described in the fifth quinquennial report as "quite remarkable".[10] This pace continued despite the disappearance of factors such as the formation of significant numbers of new Member States after 1989. Although the pace has slowed somewhat in recent years, the trend continues.[11] The strength of the trend is also illustrated by the lack of reintroductions of the death penalty by States that had earlier abolished it. The most recent quinquennial report (covering the period 1999-2003) reported no abolitionist countries as having reintroduced the death penalty during the period (compared with one State in the previous quinquennium, and four in the quinquennium before that). This situation holds. Furthermore, although three de facto abolitionist States had resumed executions in the period, this was far fewer than the nine that had done so in the previous biennium. Since the last quinquennial report, only one de facto abolitionist country has resumed executions after a period of 10 or more years. In January 2007 the Secretary-General recognized the "growing trend in international

[9] See, for example, A/HRC/8/11.

[10] E/1995/78, para. 89.

[11] E/2005/3, para. 40.

law and in national practice towards a phasing out of the death penalty".[12] It should be recalled that in paragraph 6 of its general comment 6 on article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that article 6

> "refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life".

The trend towards abolition is also reflected in the increasing number of ratifications of international instruments providing for the abolition of the death penalty.[13] The stated reasons supporting this trend, together with reasons supporting a retentionist position, are outlined in section III below.

15. A further trend, and one that is identified by a number of contributions to the present report, is that of the process whereby States arrive at abolishing the death penalty. Reported experience suggests that, absent a traumatic national event, States will move from a retentionist position to a restriction in its application, a moratorium (often de facto) and finally abolition. This is reflected in the statistics, showing a steady decrease in retentionist States, mirrored by a steady increase in abolitionist States, and a stable number of States implementing a de jure or de facto moratorium at any particular time.

III. Views reported on the death penalty

16. The contributions received from Member States contained a significant amount of material outlining various States' positions in respect of the death penalty.

A. Reasons for abolition or establishing a moratorium

17. Some States supporting abolition reported on their reasons and motivations for doing so. Six primary reasons can be identified. The first is a focus on the respect for human life. Thus, San Marino stated that it placed the primary good of human life over and above the punitive power of the State. The Bolivarian Republic of Venezuela refers to its current Constitution as embodying the guarantee of life as one of the supreme values informing the State, and Tunisia's de facto moratorium is based "on respect for human life". A number of States that maintain the death penalty, such as Botswana, also refer to constitutional guarantees of the right to life. Some States, such as Mauritius, thus saw the progressive abolition of the death penalty as contributing to the progressive protection and development of human rights. For Slovakia, abolishing the death penalty is one of the most important steps a country can take to secure human rights for everyone in its jurisdiction.

18. A second reason advanced is that capital punishment does not deter criminality more than any other form of punishment. Italy drew attention to academic studies in

[12] Secretary-General's press conference, 11 January 2007.

[13] The Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocols 6 and 13 to the European Convention on Human Rights and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Germany and Canada revealing a lowering of murder rates after abolition. Amnesty International has drawn attention to a recent survey of research on the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, which concluded: "it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment".[14] France opined that the application of the death penalty is not so much a way of fighting criminality as it is a sign of the failure of the justice system. Italy recalled the view that, since execution is transient, long-term imprisonment is a more powerful deterrent. Some States, such as Slovenia, were of the view that a better deterrent to violent crime lies in ensuring that criminals have a high chance of capture and punishment within a reasonable time.

19. A third reason is the finality of the death penalty, such that errors in the criminal justice system become irreparable. A number of States recalled that miscarriages of justice are inevitable in any legal system. Amnesty International has noted that whenever the death penalty is used, there is a grave risk that individuals are executed for crimes they did not commit, as has been shown by instances of individuals being exonerated after conviction, often on the basis of evidence provided by DNA testing. Amnesty International is of the view that it is impossible to determine how many innocent people have been put to death, as judicial reviews or investigations into possible error rarely occur after execution.

20. A fourth reason is to avoid responses based on retribution. Colombia reported that it has renounced the concept of retributive justice as a core element of the penal system, instead giving priority to resocialization, re-education and reintegration of the convicted persons into society. This position is supported by Morocco.

21. A fifth reason, advanced by States such as Slovenia, is that the death penalty constitutes cruel, inhuman and degrading treatment, which is a violation of international law. This is a result of the execution itself, as well as the cruelty of the convicted person being forced to wait on death row (often for many years) contemplating execution. Conditions of detention on death row may also amount to torture or cruel, inhuman and degrading treatment, with the organization Hands off Cain reporting that death-row prisoners often seek to be executed as soon as a possible to escape the abominable conditions of detention.

22. A sixth reason advanced for abolishing the death penalty is that its application is discriminatory, in that it is often used disproportionately against the poor, minorities and members of racial, ethnic and religious communities. It should be noted that, in its resolutions on the death penalty, the Commission on Human Rights condemned "the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices".[15]

B. Reasons for retaining the death penalty

23. States retaining the death penalty referred to their sovereignty in terms of choosing whether or not and when to abolish the death penalty. Barbados indicated

[14] Roger Hood, *The Death Penalty: A Worldwide Perspective* (Oxford, Clarendon Press, third edition, 2002), p. 230.

[15] Resolution 2005/59, para. 2.

that it respects the decision of those countries that have abolished the punishment, and expects the same respect for its decision to retain it, even in circumstances where no execution has taken place for almost 25 years. States such as Botswana, Barbados and Trinidad and Tobago referred to their vigorous democracies, independent judiciaries and criminal process guarantees in applying the death penalty. As the punishment is not prohibited in international law, States have the sovereign right to retain it for the most serious crimes, as long as it is not applied in a summary and arbitrary way, including through respect for the Economic and Social Council safeguards. Amnesty International has indicated that since its founding, the United Nations has taken action on human rights matters in many areas that would formerly have been considered solely within a State's domestic jurisdiction. In that time the United Nations has adopted, and very many States have ratified, numerous human rights treaties, thereby recognizing the obligation that a range of domestic criminal justice matters, such as the death penalty, must meet international human rights standards.

24. Cuba stated that — although it maintains the death penalty — it understands and respects the arguments for universal abolition. In these arguments, however, the context and special features of each country must be borne in mind. The Bolivarian Republic of Venezuela, which abolished the death penalty in the nineteenth century, was also of the view that any process of change in respect of the death penalty must take into account the system of values and beliefs of the society concerned.

25. Other States, such as Kuwait, indicated that the application of the death penalty is part of sharia law, on which many legal systems are built. According to Kuwait, to demand the abolition of the death penalty is to demand something that is incompatible with sharia and thus with the State's general system of law. For the Libyan Arab Jamahiriya, which retains and applies the death penalty, a State's decision to retain capital punishment is a manifestation of the right to freedom of religious belief. For countries such as Morocco, which is in the process of reflection on the death penalty, the sharing of views and positions in the debate on the death penalty is a healthy phenomenon.

26. Some States referred to the relevance of public opinion in the decision to retain or abolish the death penalty. Belarus reported that in a referendum held in 1996 a majority of the population voted to retain the death penalty. The United Kingdom of Great Britain and Northern Ireland referred to the proposals to reintroduce the death penalty in free votes on the issue held in Parliament until 1998, all of which were defeated. Canada signalled that is has no intention of reopening the national debate on the death penalty, and Slovakia reported that despite calls at the national level for reintroduction, the Government will hold firm in the view that reintroduction would be an unprecedented step against respect for human rights.

C. The death penalty as a foreign-policy theme

27. For a number of States, the universal abolition of the death penalty is a key or principle foreign-policy objective. Italy referred to its initiatives in the General Assembly, the former Commission on Human Rights and the Council of Europe. France, Portugal and the United Kingdom underlined their foreign assistance related to the abolition of the death penalty, particularly through judicial training

programmes. Germany indicated that the goal of universal abolition has become an integral part of its human rights policy, while for Sweden, universal abolition is one of the eight thematic human rights priorities. New Zealand funded the documentation of the successful campaign to abolish the death penalty in the Philippines.

28. States members of the European Union reported on its position and activities regarding the death penalty. All European Union member States are fully committed to prohibiting the death penalty and implement that prohibition in practice, thus reflecting article 2 of the European Union Charter of Fundamental Rights, which provides that no one shall be condemned to the death penalty or executed. The "Guidelines on European Union policy towards third countries on the death penalty", adopted in Luxembourg on 29 June 1998, are currently being updated. Where relevant, the European Union raises the issue of the death penalty in its dialogues with third countries, calling for its abolition, if necessary with the immediate establishment of a moratorium. Where its use is maintained, the European Union emphasizes that States should use the death penalty only in accordance with internationally recognized minimum standards and should maintain maximum transparency, including by publishing information about the death penalty and its use. When the European Union becomes aware of individual death penalty cases that violate minimum standards, it will consider making specific demarches, 80 having been undertaken since 2005. The European Union raises the issue of the death penalty in relevant multilateral forums. It further encourages and offers bilateral and multilateral cooperation; for example, it collaborates with civil society, including in the legal field with the aim of establishing a fair and impartial judicial process for criminal cases. Some 30 projects aimed at the abolition of the death penalty have been funded globally by the European Commission since 1994, with an overall budget of about €15 million.

D. Views on the process towards abolition

29. States' contributions also highlighted the importance of the process towards a moratorium on or abolition of the death penalty, many describing it as a midterm process that is necessarily context-specific. Italy opined that historical evidence shows that many countries that abolish the death penalty first go through a suspension (in law or practice). Abolition without a moratorium is usually because of a traumatic event. Although not prohibited in international law per se, the historical evolution indicates that the international community is moving towards a definitive phasing out of capital punishment. Denmark noted that this global trend is supported by the various international tribunals (including the International Criminal Court), which, although dealing with the most heinous crimes, have no power to impose the death penalty.

30. Cuba reported that, having ceased to apply the death penalty in 1959, it was obliged to reinstate it following an increase in external attacks against the country. This notwithstanding, the Government trusts that the day will come when the right conditions exist for abolishing the death penalty. Ireland reported in detail on how abolition has taken place incrementally, with three legislative enactments starting in 1964 and culminating in constitutional abolishment in 2002. Slovenia outlined how the relatively large number of criminal offences leading to the death penalty in the country after the Second World War was slowly reduced; the perceived need for

such a penalty became less urgent, and the last execution took place in 1959. Tunisia also reported that although the death penalty has not been abolished, the President's refusal to sign death warrants has led to a de facto abolition since 1991. Amnesty International has opined that, if the death penalty is eventually to be abolished, it is only fair to stop executing persons in the meantime while allowing societies time to engage in informed debate.

IV. Protection of the rights of those facing the death penalty

31. The death penalty is not prohibited under international law; however, its use is severely restricted. The standards that must be met before the death penalty can be appropriately applied are set out in international human rights law, in particular in article 6 of the International Covenant on Civil and Political Rights, and article 37 (a) of the Convention on the Rights of the Child. These standards seek to protect the rights of those facing the death penalty. In an annex to its resolution 1984/50, the Economic and Social Council set out the minimum international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty. The Council elaborated upon the standards in its subsequent resolutions 1989/64 and 1996/15. In its resolution 62/149, the General Assembly called upon all States that still maintain the death penalty to respect those standards and to provide the Secretary-General with information relating to their observance. Information provided by member States is reported below under each of the nine standards (as grouped by the Council).

A. Use only for the most serious crimes

32. In countries that have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The Human Rights Committee has established a significant jurisprudence on the application of article 6 (2) of the International Covenant on Civil and Political Rights, including the definition of "most serious crimes". The Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life. Similarly, the Commission on Human Rights, in its resolutions on the death penalty, called on States to ensure that

> that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.[16]

In his report to the fifth session of the Human Rights Council, in March 2008, the Special Rapporteur on extrajudicial, summary or arbitrary executions considered in detail the concept of "most serious crimes", concluding that "the death penalty can only be imposed ... in cases where it can be shown that there was an intention to kill which resulted in the loss of life.[17]

[16] Resolution 2005/59, para. 7 (f), and others.

[17] A/HRC/4/20, para. 53.

33. In its response, the Government of Belarus indicated that its criminal code allows the application of the death penalty as an exceptional measure for certain particularly serious crimes, including crimes involving the loss of life, high treason, conspiracy to seize State power and sabotage. The death penalty is not imposed for the planning or attempted commission of a crime. The 1999 criminal code reduced the number of crimes for which the death penalty may be applied from 29 to 14, and for 2 of them only in wartime.

34. Kuwait also indicated that the death penalty is imposed only for the most serious offences. Latvia responded that the death penalty remains applicable only for murder with especially aggravating circumstances committed in time of war; however, abolition of the penalty in all circumstances is currently under way. In its response, Tunisia indicated that capital punishment is applied only in cases of premeditated homicide or homicide accompanied by aggravating circumstances.

35. A number of States members of the European Union drew attention to the minimum standards set out in the "Guidelines on European Union policy". In considering what constitutes "the most serious crimes", the standards state that "the death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience".

36. In January 2008 the Islamic Republic of Iran introduced the death penalty for certain offences related to the production of pornographic materials.

B. Principle of legality

37. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby. A number of States referred to the "Guidelines on European Union policy", which state that capital punishment should not be carried out in violation of a State's international commitments, nor should it be imposed as an act of political revenge in contravention of the minimum standards, for example, against perpetrators of a coup d'état.

38. In its reply, Tunisia stated that the principle of legality is entrenched in both the Constitution and in the criminal code.

C. Specific groups

39. Persons below 18 years of age at the time of the commission of a crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, new mothers or persons who have become insane. In its resolution 1989/64, the Economic and Social Council recommended that States establish a maximum age beyond which a person may not be sentenced to death or executed. It also recommended eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentencing or execution. Article 37 (a) of the Convention on the Rights of the Child expressly forbids the application of the death penalty or life imprisonment to individuals under 18 years old.

40. Algeria reported that the death penalty may not be carried out on a pregnant woman or woman nursing an infant under 24 months old, the seriously ill or insane, nor individuals under the age of 18 years. Belarus indicated that under its criminal code the death penalty cannot be applied to individuals who were under the age of 18 at the time of the commission of a crime, to women or to men who reach the age of 65 before the sentence is handed down. Botswana reported that the death penalty cannot be applied to an individual under 18 years old, nor to a pregnant woman.

41. In its contribution Cuba indicated that the death penalty may not be imposed on individuals under the age of 20 years, nor on women who were pregnant at the time of committing a crime or when they are sentenced (the Government notes that the death penalty has not been imposed on any woman in Cuba since 1959). There is no criminal responsibility for individuals who suffer a mental condition that renders them unable to understand the significance of their actions or to control their behaviour.

42. In its response, Kuwait reported that the death penalty is not imposed on persons under the age of 18 at the time of the commission of a crime, nor on pregnant women, new mothers or the mentally incapacitated. Latvia reported that no women or children can be sentenced to death. Tunisia also reported that the death penalty is not applied to individuals under 18 years of age, nor to pregnant women until after they give birth. Mentally incapacitated individuals are not prosecuted through the criminal justice system, including for crimes that could result in a death sentence. New Zealand voiced specific concern that, in clear violation of international obligations, children are being sentenced to death and executed in a number of countries.

43. Human Rights Watch noted that in international treaty and customary law the prohibition on the death penalty for crimes committed by persons under age 18 at the time of the offence was well established. According to Human Rights Watch, five States are known to have executed juvenile offenders since 2005: Islamic Republic of Iran (16 executions), Saudi Arabia (3 executions), Sudan (2 executions), Yemen (1 execution) and Pakistan (1 execution). Reference is made to progress in recent years in the United States of America, Pakistan and China towards abolishing the juvenile death penalty, with varying levels of success. In March 2005 the United States Supreme Court ruled that the execution of juvenile offenders violated the United States Constitution's ban on cruel and unusual punishment.[18] In 2000, Pakistan issued a juvenile justice ordinance banning the death penalty for persons under 18 at the time of the offence. In 1997, China amended its Criminal Code to ban executions of persons under 18 at the time of the crime.

44. However, Human Rights Watch also noted that the number of known executions of juvenile offenders by those who retain the practice remains high: 29 known executions over the last five years, including 7 in 2007 alone. An even larger number of juvenile offenders are on death row. It opined that in a majority of cases, these sentences are the result of poorly enforced legislation, long periods of pretrial detention and low levels of birth registration that make it difficult for children to prove their age at the time of the offence, and criminal justice systems that fail to provide children with fundamental protections. Among other things, Human Rights Watch recommends that States ensure that children in conflict with the law have

[18] *Roper v. Simmons*, 543 U.S. 551 (2005).

prompt access to legal assistance, including assistance in proving their age at the time of an alleged offence, and require police, prosecution and judicial authorities to record the ages of children who come before them.

45. The Japan Federation of Bar Associations has referred to the provision in the Japanese code of criminal procedure prohibiting the execution of inmates "in a state of insanity". The Federation raised concerns that it is impossible to verify whether this provision is observed, as medical records are not available to inmates or their doctors.

D. Clear evidence

46. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

47. Cuba referred to the most stringent requirements of proof in death penalty cases. Tunisia indicated that the trial judge must be satisfied according to the appropriate standard of criminal proof.

E. Use pursuant to a final judgement and a fair trial

48. Capital punishment may be carried out only pursuant to a final judgement rendered by a competent court after a legal process that gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. In its resolution 1989/64, the Economic and Social Council recommended that States allow time and facilities for the preparation by the accused of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases. The Council has also encouraged States, in applying the death penalty, to bear in mind principles, guidelines and standards adopted and developed by the United Nations in the area of criminal justice, as well to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence considered in court. Finally, the Council has called upon States to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency.[19]

49. A number of States referred to the "Guidelines on European Union policy", which include a provision regarding the right of an accused to contact a consular representative.

50. In July 2007 the Human Rights Committee adopted general comment No. 32 on article 14 of the International Covenant on Civil and Political Rights (right to equality before courts and tribunals and to fair trial).[20] In the general comment, the

[19] Resolution 1996/15.

[20] CCPR/C/GC/32.

Committee surveyed the extent of States' obligations under article 14 of the International Covenant on Civil and Political Rights, and made a number of observations relevant to the application of the death penalty. It reaffirmed the position that scrupulous respect for the guarantees of fair trial is particularly important in trials leading to the imposition of the death penalty, and thus that the imposition of a sentence of death upon conclusion of a trial in which the provisions of article 14 have not been respected constitutes a violation of the right to life (article 6 of the International Covenant on Civil and Political Rights).[21]

51. Botswana reported that the law requires that the accused in death penalty cases be provided a fair trial within a reasonable time by an independent and impartial court established by law. Cuba indicated that trials are held in public before a court consisting of five judges. If the accused has not appointed defence counsel, one will be provided by the court. Appeals are heard by the highest court, which, in effect, undertakes a new trial. In Kuwait, counsel is provided at no cost to the accused. The Libyan Arab Jamahiriya also provides for a right to defence at all stages of the investigation and trial.

52. Tunisia reported on a number of fair trial guarantees in relation to the application of the death penalty, including the use of a *chambre d'accusation* to re-examine the entire investigative procedure before the case is considered by the trial chamber. All persons suspected of having committed a crime subject to the death penalty have the right to legal counsel. Death penalty cases are handled by criminal courts comprising five judges, of whom at least four must agree with the sentence (the required majority for non-capital cases is three).

53. The Japan Federation of Bar Associations has drawn attention to a 2006 revision of Japanese Prison Law such that the meetings of death-row inmates with counsel must be attended by prison officials (in the absence of justifiable reasons). All correspondence between an inmate and counsel is subject to censorship by prison officials. The Federation also draws attention to its concerns relating to access to counsel of those sentenced to death. Once the death sentence is confirmed, death-row inmates cannot use the court-appointed attorney counsel for filing an appeal for retrial or amnesty. In the case of indigent inmates, the lack of access to counsel at this stage of proceedings is critical.

54. According to Hands off Cain, on 22 May 2008 the Supreme Court and the Ministry of Justice of China jointly issued regulations on the protection of defence lawyers' roles in capital cases to ensure that defendants' legal rights were upheld.

F. Right of appeal

55. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory. A number of States referred to the "Guidelines on European Union policy", which refer to the right, where applicable, of anyone sentenced to death to submit an individual complaint under international procedures. The death sentence should not be carried out while the complaint remains under consideration through those procedures.

[21] Ibid., para. 59.

56. In its contribution, Botswana indicated that there exists a right of appeal from death sentences handed down by the High Court to the Court of Appeal. Cuba reported that appeals on death sentences are automatic, as is the case in Kuwait and the Libyan Arab Jamahiriya. In Trinidad and Tobago, according to the Government's response, appeals of death sentences are allowed but not mandatory. The appeal must be lodged within 14 days, and if the basis of the appeal is a question of fact (as opposed to law), the permission of the Court of Appeal or fiat of the trial judge is required. Tunisia also provides for automatic appeal, with the trial court's dossier referred to the Supreme Court for examination. The Japan Federation of Bar Associations has referred to a recent tendency in Japan (where appeal of a death sentence is not mandatory) whereby the accused does not file an appeal against a death sentence (or even withdraws the appeal filed by his attorney), resulting in an increasing number of capital sentences becoming final without review by a higher court.

G. Seeking pardon

57. Anyone sentenced to death shall have the right to seek pardon or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

58. The Government of Belarus drew attention to provisions in the criminal code allowing commutation to life imprisonment as the result of a pardon. The President's authority to pardon is entrenched in the Constitution of Belarus. In Botswana, there exists a right to appeal death sentences to the President for commutation or lesser sentence on the advice of the Advisory Committee on the Prerogative of Mercy. Cuba reported that the Supreme Court, if it upholds a death sentence, is obliged by law to forward the record of proceedings to the Council of State, which is the body with jurisdiction to exercise the right of pardon or to commute the death sentence to a prison sentence.

59. In its contribution, Kuwait indicated that anyone sentenced to death has the right to seek a pardon or commutation of sentence. In the Libyan Arab Jamahiriya (according to the Government), persons condemned to death have the right to seek commutation from the Court or to request that they be allowed to make amends in return for their lives being spared. This right, however, is subject to agreement with the family members of the victim and payment of blood money by agreement between the parties. Morocco reports that in the current situation of de facto moratorium a royal pardon is granted to everyone sentenced to death and their sentences are commuted to life imprisonment. Trinidad and Tobago referred to the Advisory Committee on the Power of Pardon established under the Constitution. That Committee, which receives a report from the trial judge in every death penalty case, provides non-binding advice to the Minister of National Security and the President on clemency. Tunisia reported that the prosecutor must bring every sentence of death to the attention of the Secretary of State for Justice, who will present it to the President for possible pardon.

60. The Japan Federation of Bar Associations referred to the absence of the possibility (once the death penalty is confirmed) of the sentence being commuted to life imprisonment with labour. Though an amnesty system exists, it has very rarely been applied in cases of capital punishment, the last instance being in 1975.

H. Stay of execution pending appeal or pardon

61. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence. In its resolution 1996/15, the Economic and Social Council called upon States to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question. The Human Rights Committee found a grave breach of a State party's obligations under the First Optional Protocol to the International Covenant on Civil and Political Rights in circumstances where, despite the Committee's request for a stay of execution until it could consider the complaint, the State party nonetheless proceeded to execution.[22]

62. Cuba indicated that, as all death sentences are forwarded to the Council of State for consideration of commutation, no execution may be carried out until such time as the Council of State has reached a decision (or the deadline for the decision has passed). The Government also drew attention to recent commutations of almost all those death sentences.

63. Trinidad and Tobago referred to the country's appeal process, the highest court of appeal being the Judicial Committee of the Privy Council. No execution can be carried out until all appeals are finalized or until all applications for permission to appeal have been refused. By law, appeals are to be held expeditiously. Tunisia reported a specific provision of the criminal procedure code suspending execution of a death sentence pending appeal. Trinidad and Tobago drew attention to the provision in its criminal procedure that execution cannot take place until the appeal is concluded or until the period during which appeals must be lodged (14 days) has expired.

64. The Japan Federation of Bar Associations indicated that the filing of an appeal for retrial or for amnesty in Japan is not considered to be a cause of suspension of the execution, and that the Committee against Torture has expressed concern in this regard.[23]

I. Minimum suffering

65. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. In its resolution 1996/15, the Economic and Social Council urged States to effectively apply the Standard Minimum Rules for the Treatment of Prisoners in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering. A number of States referred to the "Guidelines on European Union policy", which state that the death penalty may not be carried out in public or in any other degrading manner.

66. The Human Rights Committee has consistently found that the mandatory imposition of the death penalty for any crime constitutes an arbitrary deprivation of life and thus a violation of article 6 of the International Covenant on Civil and Political Rights.[24] This position was supported by the Commission on Human

---

[22] *Piandiong v. Philippines*, communication No. 869/1999, views adopted on 19 October 2000.

[23] CAT/C/JPN/CO/1, para. 20.

[24] *Eversley Thompson v. Saint Vincent and the Grenadines*, communication No. 806/1998, views adopted on 18 October 2000.

Rights,[25] as well as the Special Rapporteur on extrajudicial, summary or arbitrary executions, who was also of the view that mandatory death sentences risk cruel, inhuman or degrading punishment.[26] The Committee against Torture has addressed the conditions of detention for those on death row, which may amount to cruel, inhuman or degrading treatment not only as a result of physical circumstances, but also as a consequence of the mental anguish caused by an excessive length of time on death row.[27]

67. The Libyan Arab Jamahiriya reported that execution by certain means such as the electric chair, lethal injection or toxic gases is not acceptable. Botswana listed a number of conditions under which those sentenced to death are detained, including separate detention from other inmates, access to family visits and regular medical examinations. The Japan Federation of Bar Associations has referred to the lack of prior announcement of executions, such that the condemned person is informed only approximately an hour before it occurs. No prior announcement is made to the family or the attorney. According to the Federation, the lack of prior announcement deprives inmates of opportunities to challenge the legitimacy of executions and imposes enormous everyday fear on the inmates.[28]

68. According to Hands off Cain, in January 2008 the Islamic Republic of Iran announced that the head of the judiciary must approve any executions to be carried out in public and banned all pictures of the events. However, this directive is not being fully complied with across the country.

V. Conclusions and recommendations

69. **The solid and long-standing trend towards global abolition of the death penalty identified in previous reports of the Secretary-General to the Economic and Social Council and to the Human Rights Council continues. The contributions of States to the present report suggest that the establishment of a moratorium on the application of the death penalty is a key step towards eventual de jure abolition of this form of punishment.**

70. **For States that maintain the death penalty, the standards to safeguard the rights of those sentenced to death are of crucial importance in ensuring that the punishment is carried out in a manner consistent with States' international legal obligations.**

71. **While differences persist among Member States as to the appropriateness of the use of the death penalty, the information presented in this report suggests that further work could usefully be carried out on specific restrictions on the use of capital punishment, such as the prohibition on the execution of certain groups of individuals or the prohibition on torture and other cruel, inhuman or degrading treatment or punishment in the application of the death penalty, including the conditions of detention of those on death row.**

[25] Resolution 2005/59, para. 7 (f).
[26] See A/HRC/4/20.
[27] See CAT/C/ZMB/CO/2.
[28] CAT/C/JPN/CO/1, para. 19.